

**ABORIGINAL PARTICIPATION IN ENVIRONMENTAL ASSESSMENTS FOR
NATURAL RESOURCE DEVELOPMENT**

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By

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ABSTRACT

Aboriginal participation is a key component of environmental assessment (EA), and is recognized in various policy processes concerning natural resources development across Canada. Despite the recognition of the participation of Aboriginal peoples as foundational to effective EA, there are long-standing concerns about the limited influence of Aboriginal communities on decisions about developments on their traditional lands. The recent push for more effective and meaningful Aboriginal engagement in development decisions arises, in part, from increased industry and regulatory demand for the streamlining of EA to achieve a more efficient and timely EA process. Notwithstanding the increasing scholarly and policy literature on Aboriginal participation in EA, little research exists on viable solutions to advance meaningful Aboriginal participation in EA whilst maintaining a degree of process efficiency to support timely EA decisions about resource development. This thesis draws on the experiences from industry, government and Aboriginal communities involved in EA for mineral resource development in northwest Saskatchewan, Canada and case studies in international EA practices, to advance the effectiveness of Aboriginal participation in EA. Effectiveness is defined as participation that is both meaningful to those affected and efficient for those seeking development approvals.

The research methodology includes the review of scholarly and policy research, several legal and EA case reviews and semi-structured interviews. First, this thesis examined the evolution of participation in EA in Canada, and the extent to which scholarly research has contributed to solutions for meaningful Aboriginal participation amidst increasing demands for a regulatory process that is more efficient and with shorter timelines for participation and decision-making. Second, attention is focused on the underlying practice-based challenges to meaningful and efficient Aboriginal participation in EA, explored through semi-structured interviews and a case study of EA in northwest Saskatchewan, and adopting a policy community model. Third, drawing on the international literature, case experience, and lessons from northwest Saskatchewan, reforms and enhancements to the current EA system are proposed to help ensure meaningful and efficient participation of Aboriginal peoples in EA processes. The thesis concludes with a discussion of the main findings, addresses specific recommendations to advance Aboriginal participation in EA for uranium development in northwest Saskatchewan, and identifies opportunities for future policy

and scholarly research. Results of this research indicate that many of the challenges are multi-dimensional, and of considerable concern to both meaningful and efficient Aboriginal participation in EA. Understanding the nature of these underlying challenges requires increasing attention to the needs, expectations, roles and responsibilities of key actors engaged in the EA policy community, and exploring the much needed institutional and process reforms are critical to advancing meaningful Aboriginal participation in EA without compromising timely decisions for development proponents.

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LIST OF ABBREVIATIONS

AANDC	Aboriginal Affairs and Northern Development Canada
EA	Environmental Assessment
CEAA	Canadian Environmental Assessment Act
CEAA	Canadian Environmental Assessment Agency
CCME	Canadian Council of Ministers of the Environment
CNSC	Canadian Nuclear Safety Commission
CAN	Canadian Nuclear Association
CRDN	Clear River Dene First Nation
CEMF	Cumulative Effects Monitoring Framework
CEA	Cumulative Effects Assessment
EIS	Environmental Impact Statement
HGIS	Historical Geographical Information System
NEB	National Energy Board
NEPA	United States National Environmental Protection Agency
NGO	Non-governmental Organization
NEQC	Northern Environmental Quality Committee
NRCan	Natural Resources Canada
IGWG	Intergovernmental Working Group
IRC	Industrial Relations Committees
R-SEA	Regional Strategic Environmental Assessment
SMA	Saskatchewan Mining Association
TOR	Terms of Reference

CHAPTER 1

ABORIGINAL PARTICIPATION IN ENVIRONMENTAL ASSESSMENTS FOR NATURAL RESOURCE DEVELOPMENT

1.1 Introduction

This thesis examined the enduring practice-based challenges to, and opportunities for, a more coordinated and meaningful approach to Aboriginal participation in Environmental Assessment (EA) amidst increasing pressures for a more efficient (i.e. less cumbersome) and timely EA process to support decision making about natural resource development projects. A case study of resource development in the municipality of La Loche and the Clear River Dene First Nation in northwest Saskatchewan, home to Canada's largest uranium mining operations and future oil sands development, is examined. Exploring the scholarly literature on Aboriginal participation in EA, alongside the experiences of EA regulators, industry and Aboriginal communities regarding the meaningfulness and efficiency of Aboriginal participation in EA provided both practical insight and valuable lessons to improve Aboriginal participation in EA whilst ensuring a degree of efficiency in impact assessment.

This research is particularly important given the growing demands for resource exploitation and industrial development in Canada's North, coupled with increasing pressures for more meaningful Aboriginal participation and timely development decision making. This research is also timely given renewed federal government commitments to "restore credibility to environmental assessment", and to create a "new, comprehensive, timely and fair process" that, among other things, ensures meaningful Aboriginal participation¹. In addition to contributing to scholarly literature on Aboriginal participation in EA for resource development, this research also aims to advance Aboriginal participation in EA by providing recommended practice reforms – observations and lessons that are applicable to other communities and EA systems across the Circumpolar North.

¹ Revising the federal EA process was identified in the Liberal party's 2015 campaign platform, 'Real change: A new plan for Canada's environment and economy.'

1.2 Environmental assessment and Aboriginal participation

Environmental assessment is one of many policy instruments that can help protect the productivity and capacity of social and natural systems, increase environmental awareness, and promote sustainable resource use. First introduced more than forty years ago by way of the *United States National Environmental Policy Act* (NEPA), EA is now an international innovation in environmental governance, and provides a formal platform to garner environmental information for decision-making about major resource development undertakings (Richardson and Cashmore, 2011; Sadler, 2004). As EAs are designed to identify and respond to planning and resource development issues and support decisions that are in the public interest, public and/or Aboriginal participation in EA is required in some form in all EA systems internationally and in Canada. Under the *Canadian Environmental Assessment Act, 2012*, for example, the Act is designed to ensure that opportunities are provided for meaningful public participation (sec 1(e)); as well as the acknowledgement of Aboriginal people's knowledge in the EA process (sec 19(3)). Environmental assessment under all comprehensive land claims agreements across Canada's territorial North also provide for the engagement of Aboriginal peoples directly in resource development planning.

There is a rich history of EA and Aboriginal participation in resource development in Canada. In 1975, for example, the James Bay and Northern Quebec Agreement, signed by the Cree and Inuit, established provisions for greater participation of Cree and Inuit communities in environmental decision making (Armitage, 2009; Hanna, 2005). It was the Berger Inquiry of the proposed Mackenzie Valley energy pipeline project, however, that set a precedent for Aboriginal participation during EA in northern Canada, bringing to bear the issues of northern hydrocarbon development and Aboriginal policy to the attention of all Canadians (Gamble, 1978; Berger, 1977). The Berger Inquiry lasted three years, engaging dozens of Aboriginal communities along the Mackenzie River to gauge their concern about the proposed project. What was most impactful about the Berger Inquiry was not Berger's conclusions and recommendations for a moratorium on pipeline development until land claims were settled, but rather how he arrived at them.

In his report, Berger writes: "To hear what they [northerners] had to say, I took the Inquiry to 35 communities...All those who had something to say – white or native – were given an opportunity to speak... I have been concerned that the native people should have an opportunity to speak to

the Inquiry in their own villages, in their own language, and in their own way.” Bocking (2007) explains that Berger’s process “really shook conventional thinking”, demonstrating that the best decision requires not only the right information but the right process. Bocking goes on to explain that ever since, the credibility of EA has depended on not just expertise but on transparency and accountability. Some scholars suggest that the Berger Inquiry set international expectations for Aboriginal participation in natural resource development undertakings, and the inclusion of affected communities created a baseline model for all future impact assessments of Northern developments (Gibson 2011; Gibson and Hanna, 2009; Bocking, 2007; Armitage 2005).

Aboriginal participation is deeply rooted in EA, and Aboriginal participation has been a longstanding focus of EA scholars (e.g. Shapcott, 1989; Usher, 1982). In the context of this study, Aboriginal participation refers to the meaningful interaction between industry proponents, government agencies, and indigenous communities whose rights and interests may be affected (Whitelaw et al., 2009; Usher, 2000; Huttunen, 1999), to identify the benefits and impacts of proposed projects prior to permit issuance and throughout the project life cycle. Under EA processes, Aboriginal participation is defined separately from the legal *duty to consult*, and Aboriginal interests are but one of many interests who engage in the EA process. Though, the insights and concerns identified through early Aboriginal participation in EA can be used by governments to determine if a proposed project may have negative impacts on Aboriginal or treaty rights—thus triggering government’s legal duty to consult (Booth and Skelton, 2011b, p. 371), and by proponents to better manage the impacts of their projects. Federal and provincial Crowns will often rely on the EA process to fulfill, at least in part, their legal consultation requirements, and may also rely on environmental effects mitigation measures identified during the EA process as accommodation for impacts on Aboriginal treaty rights that may result from those effects.

1.3 Environmental assessment expectations and Aboriginal participation

There is diversity of expectations concerning what EA should be about, and what it can and should deliver (Cashmore, 2004). EA can either be viewed as a process that hinges on science, and delivers objective and value-free information about the likely impacts of a proposed development; or it can be seen as a process to empower local communities to make their own, independent decisions about resource development and broader resource policy issues. In Canada, EA largely

adopts a middle ground – that of an information provision process – informed by science and technology, and by the knowledge and insight gained through the participation of affected communities and other experts; and is designed to aid those responsible for making decisions about resource development projects to make informed decisions.

Expectations about how Aboriginal peoples are engaged in the practice of EA are also diverse, and influenced by a variety of factors often external to the EA process itself – including the constitutional rights of Aboriginal peoples, as outlined under Section 35 of the *Constitution Act, 1982*. The federal or provincial Crowns have a legal obligation to consult Aboriginal peoples when it contemplates a course of action (e.g. permitting and licensing for resource extraction; lease or allocation of unoccupied land to a third party) that might adversely impact the exercise of potential or established Aboriginal and Treaty rights over traditional lands, resources and governance structures (Morellato, 2008). Aboriginal participation during EA regulatory processes are sometimes used, to the extent possible, to fulfill the Crown's duty to consult and to address the concerns of Aboriginal peoples concerning impacts to Treaty rights, environmental issues, and economic benefits stemming from resource developments on their traditional lands.

Court rulings are increasingly used to guide the Crown's conduct in proactively consulting and accommodating Aboriginal peoples in resource development, including in EA, and to ensure the duty is discharged in a manner that upholds the honor of the Crown and promotes the reconciliation of both the Crown and Aboriginal interests (Newman, 2014). For instance, the Haida², Taku River³ and Mikisew Cree⁴ Supreme Court decisions defined the scope of the Crown's legal obligations, and enunciated legal principles under the duty to protect the infringement of established or potential Aboriginal rights prior to their proof in a court of law, and to ensure the inclusion and participation of Aboriginal peoples in Crown decisions affecting Indigenous lands, resources and people. The importance of consultation processes and the responsibilities of the Crown are affirmed by existing case law. However, the nature and extent to which Aboriginal peoples are

² Haida Nation v. British Columbia (Minister of Forests) <http://scc.lexum.umontreal.ca/en/2004/2004scc73/2004scc73.html>.

³ Taku River Tlingit First Nation v. British Columbia (Project Assessment Director) <http://scc.lexum.umontreal.ca/en/2004/2004scc74/2004scc74.html>.

⁴ Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage) <http://scc.lexum.umontreal.ca/en/2005/2005scc69/2005scc69.html>.

engaged in the practice of EA once the process is triggered (e.g., the identification, assessment and management of project impacts), up to when the proponent submits its impact statement, varies considerably from one project to the next. Further, whether and how such engagement unfolds may reflect broader expectations, and rights, about what can or should happen during the EA process, versus what needs to happen leading up to the EA process to sufficiently address Aboriginal rights with respect to broader resource development issues.

Broadly speaking, Aboriginal participation in EA is considered as effective when its intended purpose is achieved in a meaningful and inclusive manner; and as efficient when EA regulatory approvals for resource development are not unnecessarily delayed due to participatory processes. Hilding-Rydevik (2006), however, cautions that effectiveness and efficiency can be “...viewed from the various and differing perspectives of the many actor groups that are a part of the EA system and its processes” (p. 25). This implies that whether an effective EA process is necessarily also an efficient one, or *vice versa*, depends to a large extent on the views of the different actors involved, their interests and power positions, and their role in and influence on the environmental decisions that emerge (Hilding-Rydevik and Bjarnadóttir, 2007; Kørnøv and Thissen, 2000).

Meaningful Aboriginal participation in EA is when those Aboriginal interests potentially affected by development, or have a vested interest in development, are enlisted into the planning, assessment and decision process to contribute to it, thus providing opportunities for the exchange of information, opinions, interests, and values (Noble and Udofia, 2015). It also means that those initiating the process of engagement, or proposing the development initiative, are open to the potential need for change in a proposed development, and are prepared to alter plans or to amend or even drop proposals. Meaningful Aboriginal participation in EA thus extends beyond issuing notice that a particular undertaking is about to occur, or making project information available and soliciting public feedback. Drawing on the International Association for Impact Assessment’s best practice principles for participation⁵, meaningful participation implies, at a minimum:

⁵ See the International Association for Impact Assessment’s ‘Public participation – international best practice principles.’ available at <http://www.iaia.org/publicdocuments/special-publications/SP4%20web.pdf>

- Early notice to those potentially affected by development about the prospects of a development proposal and opportunities for engagement.
- Access to complete and accurate information about a proposed development, including information about project's design, location and known baseline conditions and impacts.
- Early engagement, prior to EA submission, to develop a working relationship with potentially affected communities to identify potential problems and concerns and to work together on developing solutions.
- Transparency, whereby development plans, decisions and decision-making processes are publically and easily accessible.
- Ensuring that affected communities have the necessary resources (financial, technical, human) to engage in the EA process and remain engaged post-EA approval.
- Affected communities are willing to engage for the purpose of improving project design, managing impacts, and providing information of relevance to the regulatory decision making process.
- There is an opportunity for formal, legal challenge or intervention should community concerns not be adequately addressed or due process for engagement not followed.
- Proponents and communities have a genuine interest in working together to understand the issues and concerns of both parties and to resolve them.
- An opportunity to influence a project's design and the outcomes of the regulatory decision making process.

Meaningful Aboriginal participation is a necessary undertaking for project proponents to earn a social license to operate (Dare et al., 2014; Prno and Slocombe, 2012), it promotes legitimacy in regulatory decisions and project outcomes (Nakamura, 2013; Fidler, 2010), and is also vital to ensuring that development satisfies both the needs of the proponent, and that of the community by ensuring protection of traditional land uses and cultural values (Booth and Skelton, 2011b; Voutier et al., 2008). Nonetheless, the current approach to Aboriginal participation in Canadian EA practice has been widely criticized for being cumbersome, costly, and geared more toward meeting legal requirements for consultation rather than ensuring meaningful input to inform resource development plans and decisions (e.g. Salomons and Hoberg, 2014; Baker and McLelland, 2003). There are also long-standing concerns about the limited influence of Aboriginal communities on

decisions about developments on their traditional lands (Kirchoff and Tsuji, 2014; Kirchoff et al., 2013; Booth and Skelton, 2011a, b). For instance, the Lax Kw'alaams First Nation, while voicing concerns about Pacific Northwest's (PNW) recently proposed LNG terminal north of Prince Rupert, British Columbia, noted that they are "open to development...but not the way the project is currently constituted," going on to explain that their "concerns regarding the environmental impact of PNW project have not been resolved" (Thomas, 2015).

Parallel to Aboriginal concerns are concerns by project proponents about the scope of Aboriginal participation in EA processes, and the challenges to reaching timely and cost-efficient decisions about development applications (Cashmore et al., 2010; Voutier et al., 2008; McCrank, 2008). The President and CEO of the Canadian Chamber of Commerce, for instance, recently described the Canadian federal environmental regulatory system as "cumbersome" and "one of the top ten barriers to Canadian competitiveness", noting that "added delays and costs imposed by the overcomplicated process dull our competitive edge in global markets and place Canada's standard of living at risk."⁶ Such a perspective echoes the need to ensure that participation in EA is considered effective and efficient by both those impacted by development and by those proposing and regulating development (Olsen and Hansen, 2014; Diduck et al., 2013; Diduck et al., 2007).

These enduring concerns about the meaningfulness of Aboriginal participation in EA, and the need to ensure timely decisions about resource development, are reflected in recent EA regulatory reforms – both in Canada and internationally (see Bond et al., 2014). In Canada, for example, at the federal level, recent streamlining of the federal EA regulations imposes limits on participation to those who are either "directly affected" or have "relevant information" (Parliament of Canada, 2012a). The intent was to add efficiencies to the federal EA process by reducing the costs and potential for delays to economic developments, while at the same time ensuring more effective participation focused on "interested parties". Such restrictions to the scope of participation, however, have been argued by some to present significant challenges to the engagement of Aboriginal communities who may have a long-standing and traditional interests in a region, but

⁶ Canada's Economic Action Plan 2012 – Resource Development – Jobs, Growth and Long-term Prosperity. See http://publications.gc.ca/collections/collection_2012/rncan-nrcan/M4-104-2012-eng.pdf

whose current lands and resources are not “directly affected”, thus compromising the legitimacy and benefits of EA (Salomons and Hoberg, 2014; Bond et al., 2014; Morgan, 2012; Gibson, 2012).

Others note that the demand for increased efficiency in EA should be focussed instead on ensuring more meaningful participation and the recognition of the importance of Aboriginal traditional knowledge, rather than restricting those able to participate in EA for resource developments (Vlavianos, 2010; Glasson et al., 2005). Recent streamlining under federal EA in Canada has also reduced the scope of projects subject to assessment, meaning that fewer projects that have the potential to impact Aboriginal lands and resources are now subject to EA (Kirchhoff et al., 2013). It is not that Aboriginal participation in EA is considered unimportant or unnecessary; rather, the current EA process struggles to facilitate engagement that is meaningful to both the communities affected by resource development and the proponents proposing to undertake development.

Canada’s newly elected Liberal government has expressed a commitment to improve the federal EA system and to strengthen the involvement of those most affected by environmental decisions, including Aboriginal communities⁷. The Budget 2016 allocation of \$16.5 million dollars to the National Energy Board, Natural Resources Canada and Transport Canada to support enhanced Aboriginal participation and Crown consultations for projects undergoing EA reviews comes at the heels of government’s commitment to restoring meaningful relationships between Aboriginal communities and the Crown (Government of Canada, 2016). Part of this renewed interest in building respectful partnerships with Canada’s First Nation, Inuit and Métis communities is to ensure that consultation processes carried out for resource development, including those related to the EA process and other regulatory processes, are in accordance with recognized International human rights norms, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). According to Coates (2013), Aboriginal peoples are indeed ready for governments, and industry, to recognize and work alongside them to address their concerns and solve those issues threatening their political and cultural rights and aspirations.

⁷ Liberal government’s promise to make environmental assessments credible again.
<http://www.liberal.ca/realchange/environmental-assessments/>

That said, though the need for, and benefits of, Aboriginal participation in EA are well documented (Rozema et al., 2012; Southalan et al., 2011; Fidler, 2010; O’Faircheallaigh, 2009; Dietz and Stern, 2008; O’Faircheallaigh, 2007; Jay et al., 2007; Clark et al., 2006; Hanna, 2005; Owens, 2004), a major challenge still facing EA practitioners, regulators, industry, and affected communities is how to ensure meaningful engagement so as to maintain the integrity and credibility of the EA process, and ensure Aboriginal rights are respected, while at the same time achieve a degree of efficiency in participation processes and thus timeliness to support decisions about resource development. Given that limited empirical research has been focussed on examining the challenges and systematic reforms needed to ensure *both* more meaningful *and* more efficient Aboriginal participation in EA, viable avenues to advance meaningful Aboriginal participation alongside a more efficient EA regulatory processes for proponents have seldom been explored.

1.4 Research purpose

The purpose of this research was to understand the prospects and challenges to achieving EA processes that are both meaningful in providing the opportunity for communities to shape the outcomes of proposed resource development initiatives, yet efficient in accommodating the needs of proponents to obtain a decision in timely and financially viable manner. Specifically, the purpose of this research was realized based on three overarching research questions:

- 1. How has the scope of scholarly research on Aboriginal participation in EA evolved over time, and what are the potential implications for meaningful and efficient EA and participatory processes?*
- 2. What is the perception of EA regulators, industry and communities concerning the meaningfulness and efficiency of Aboriginal participation and consultation during EA decision making for resource developments?*
- 3. What are the lessons and opportunities to improve Aboriginal participation from past and current EA processes for resource development, and how might these help advance future EA practice?*

The focus of this research was primarily on the meaningfulness and efficiency of Aboriginal participation during the application phase of EA, from the time the assessment process is triggered

until the environmental impact statement (EIS) is submitted. Such an approach allows for a thorough investigation of the challenges and opportunities for Aboriginal participation in the practice of EA, but at the same time remains sensitive to the reality that EA is often approached on a much larger, macro-scale and, as such, perspectives about the practice of EA are often influenced by expectations about what should happen prior to the commencement of EA, during the policy and planning stages of resource development. It is hoped that the results of this thesis will contribute meaningfully to the current federal government's commitment to reform EA, and to efforts across other EA jurisdictions to strengthen the involvement of Aboriginal peoples.

1.5 Resource development in northern Saskatchewan

Part of this research was informed by EA and resource development in northern Saskatchewan, Canada. This region was selected for the study because of its rich history of major resource development, and the potential for significant future mineral and energy developments that could significantly change communities in northwest Saskatchewan in the long term. Northwest Saskatchewan is home to several Aboriginal reserves, settlements, small northern municipalities and communities. The municipality of La Loche and the Clear River Dene First Nation (CRDN), northwest Saskatchewan, are adjoining communities located in a resource-rich region characterized by long-term uranium mining activity and, more recently, oil sands exploration (Figure 1.1).

The local economy of the region is largely based on hunting, fishing, trapping activities and more recently, uranium mining (Statistics Canada 2011). The 2011 Canada Census data shows the population of La Loche as approximately 2,611, and the CRDN with a population of approximately 778 (Planning for Growth North, 2014; Statistics Canada, 2013). The CRDN and La Loche are struggling communities, faced with pressing socioeconomic issues including unemployment, poverty, low educational attainment, and poor personal and social health. La Loche, for instance, has experienced for many years increasing violence and drug addiction; youth suicide rates are estimated at three times the national average (Kruchak, 2016; Statistics Canada, 2011). Nonetheless, residents and the leadership of these northern communities are optimistic for a better future and a more inclusive economy, characterised by environmentally and socially sustainable resource development.

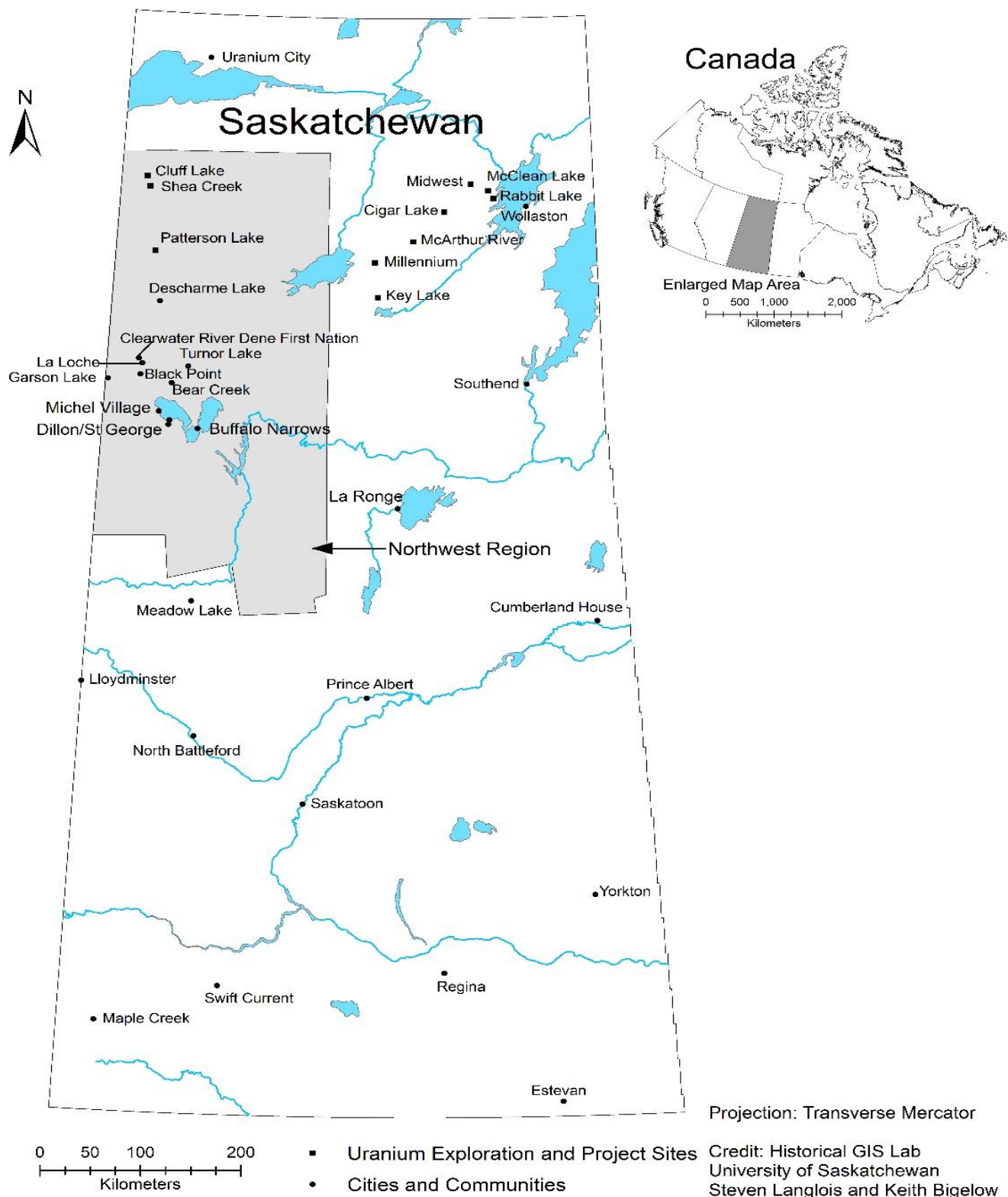


Figure 1.1: Northwest region of Saskatchewan communities and uranium development projects.

Some of the highest-grade uranium deposits (U_3O_8) in the world are located within the vicinity of CRDN and La Loche, in the Athabasca Basin of northern Saskatchewan, Canada. According to the Canadian Nuclear Association (2015), uranium mining in the Athabasca Basin produces one-third of the uranium used worldwide. Major uranium production began in the region in the 1970s, with previously named Cogenta Resources, now Areva Resources, and Cameco Corporation as the major licensees. Mine sites in the area include, amongst others, the now decommissioned Cluff Lake, Cigar Lake, McArthur River and Key Lake operations. Combined, the Cigar Lake and McArthur River mines contribute approximately 75% of Saskatchewan's uranium supply, with uranium concentrations about 100-times the world's average grade. Uranium deposits at the nearby Shea Creek, Patterson Lake South and Turnor Lake present the likelihood of major mine developments in the future. Viable deposits discovered by Fission Uranium Corp. at Patterson Lake South, about 120 kilometers north of La Loche, could potentially open up one of the world's largest high-grade uranium mines⁸. Fission Uranium foresees an average annual production of 7.2 million lbs U_3O_8 over the 14-year life of the mine. Several other mining or exploration companies have vested project interests or properties in the region.

Saskatchewan is also Canada's second largest oil producer and northwest Saskatchewan is home to significant oil sands deposits. Bitumen was first discovered in the area in 2006, along the Clearwater River in CRDN and near Axe Lake, about 100 kilometers northeast of Fort McMurray on the Saskatchewan side of the border (Cattaneo, 2012). The Saskatchewan Mining Association projected in 2012 that future uranium mining and oil sands development in northern Saskatchewan could generate thousands of jobs and increase the province's annual gross domestic product growth rate. Given the opportunity for these scales of developments, La Loche, CRDN and other surrounding communities with interests will seek how they could benefit not only from increased employment opportunities but also from substantial economic spin-offs, such as improved local infrastructure, trainings and service creation (Planning for the North, 2014).

EA in Saskatchewan is mainly carried out under *The Saskatchewan Environmental Assessment Act*. Uranium mining, however, is subject to harmonized EA under both Saskatchewan provincial and Canadian federal EA. The Saskatchewan Ministry of Environment and the Canadian

⁸ <http://www.fissionuranium.com/project/pls/news/>

Environmental Assessment Agency coordinates federal-provincial review efforts as per the Canada-Saskatchewan Agreement on Environmental Assessment Cooperation (Cooperation Agreement). The EA processes for large uranium mining operations are administered by review panels established to identify the environmental effects of proposed projects and to propose measures to address those effects (CNSC, 2015). Applications for mineral exploration and, under certain conditions, mine extension or access roads, are subject to EA under *The Saskatchewan Environmental Assessment Act*. Aboriginal participation is specified under both federal and provincial EA laws and regulations – opportunities for participation and the Crown’s legal consultation requirements.

Federally, under the *Canadian Environmental Assessment Act, 2012*, provisions exist for Aboriginal groups to be involved at different times during an EA; but there is no specific EA requirement for Aboriginal participation prior to, and during the design or planning stages of, a resource or industrial development project. At the provincial level, the government of Saskatchewan provides a platform for early engagement of potentially impacted communities through its proponent’s handbook of voluntary engagement with First Nations and Métis communities⁹. The province also provides a proponent’s guide for participation and consultation with First Nations and Métis communities,¹⁰ as well as a First Nation and Métis Consultation Policy Framework¹¹. The framework outlines, amongst other things, the Province’s legal duty to consult with affected First Nations and Métis communities and interest-based engagement for use by government ministries, agencies and Crown corporations, and project proponents for proposed activities on traditional land that could adversely impact the ability of First Nations and Métis communities to exercise their Aboriginal and/or Treaty rights.

⁹ <https://www.saskatchewan.ca/live/first-nations-citizens/lands-and-consultation/consultations>

¹⁰ <http://www.environment.gov.sk.ca/EAProponentConsultationGuidelines>

¹¹ <http://gr.gov.sk.ca/Consult-Policy-Framework>

1.6 Policy Community

Conceptual frameworks can serve as a heuristic device to ground the empirical analysis of emerging issues discovered in an inductive study. To help achieve the objectives of this research, the perspectives of a cross-section of interests engaged in EA processes was drawn upon to examine the meaningfulness and efficiency of Aboriginal participation in EA. This thesis adopted the policy community model to help facilitate an exploration of the perspectives of those engaged in EA in northwest Saskatchewan, and to help understand the relationships between the actors involved in the EA policy arena. According to Williamson (1975), policy communities indicate “a policy process in which organized interests and government actors play a major role in shaping the direction and outcome of public policies” (Miller and Demir, 2006, pg. 137). Interactions within a particular policy domain can occur between and among government agencies, interest groups, corporations, industry associations, elected officials, and other institutions and individuals. The concept of a policy community is often-times referred to as regulatory sub-government (Pross, 1990; 1986), policy network (Miller and Demir 2006; Heclo 1978), and iron triangle Lowi (1969).

Pross (1990) categorises the actors in a policy community into two broad groups, namely the sub-government, and the attentive public or affected interests. The sub-government is the primary decision making body in a particular policy setting, and consists of the relevant decision-makers and key actors with strong influences on a given decision. The attentive public, or affected interest, includes those who are interested in or affected by policy issues, but usually with minimal participation and often little influence on policy and decision-making processes. Considering the complexity of policy making processes, other models of policy networks have been introduced alongside the policy community to better capture the intricacies of the process but with a greater focus on the interactions between central decision-makers (see Miller and Demir, 2006; Thatcher 1998; Rhodes, 1997). In contrast to other models, however, the policy community’s emphasis on the sub-government and attentive public provides a more holistic approach for analyzing all aspects of issues and concerns for all actors and interest groups who share an interest in a particular industry in the context of their broader public policy role (Wilks and Wright, 1987; Pross, 1986). In the case of uranium exploration and mining in northern Saskatchewan, as captured in Figure 1.2, the key actors involved in the EA policy community are provincial government departments

and agencies (and federal authorities if a proposed project is of shared federal/provincial responsibility); Aboriginal governments; industry or project proponents proposing a development; environmental non-government agencies; environmental consultants who often carry out the EAs on behalf of project proponents; legal actors (e.g. the courts); and First Nation and Métis communities and other Aboriginal interests who are often directly or indirectly affected by development.

The sub-government consists of decision makers (e.g. the federal Minister in charge of the Canadian Nuclear Safety Commission, the federal Minister of Environment and Climate Change, the provincial Minister of Environment, various EA regulators and directors), who either make, or regulate, project licensing and EA decisions. Closely related in the sub-government category are other influential actors including the industry, environmental consultants, private corporations, environmental non-governmental agencies, the legal system, and Aboriginal governments. The legal system, including the courts, often play an influential role in setting expectations about what Aboriginal participation in EA should involve, and in shaping the policy community in general, but are often absent from models that depict the policy community. In this research, although the influential role of the legal system is recognized, particularly in terms of recent decisions regarding Aboriginal consultation and resource development, attention was focused primarily on other members of the sub-government – in particular, Aboriginal communities and groups who are interested in, or directly impacted by, EA practices and who often introduce constructive conflict into EA as a means to influence decision processes (Maclean et al. 2015).

In seeking to understand the meaningfulness and efficiency of Aboriginal communities' participation in EA decision-making, the policy community model provides a conceptual basis for exploring and critiquing the involvement of Aboriginal communities and various interest-groups in the EA and decision making processes. Acknowledging that different actors have diverse expectations about the EA process, analysing the views of all actors serves to ensure that all sides and aspects of issues are adequately explored when examining the challenges to, and opportunities for, more meaningful Aboriginal participation in EA for resource development.

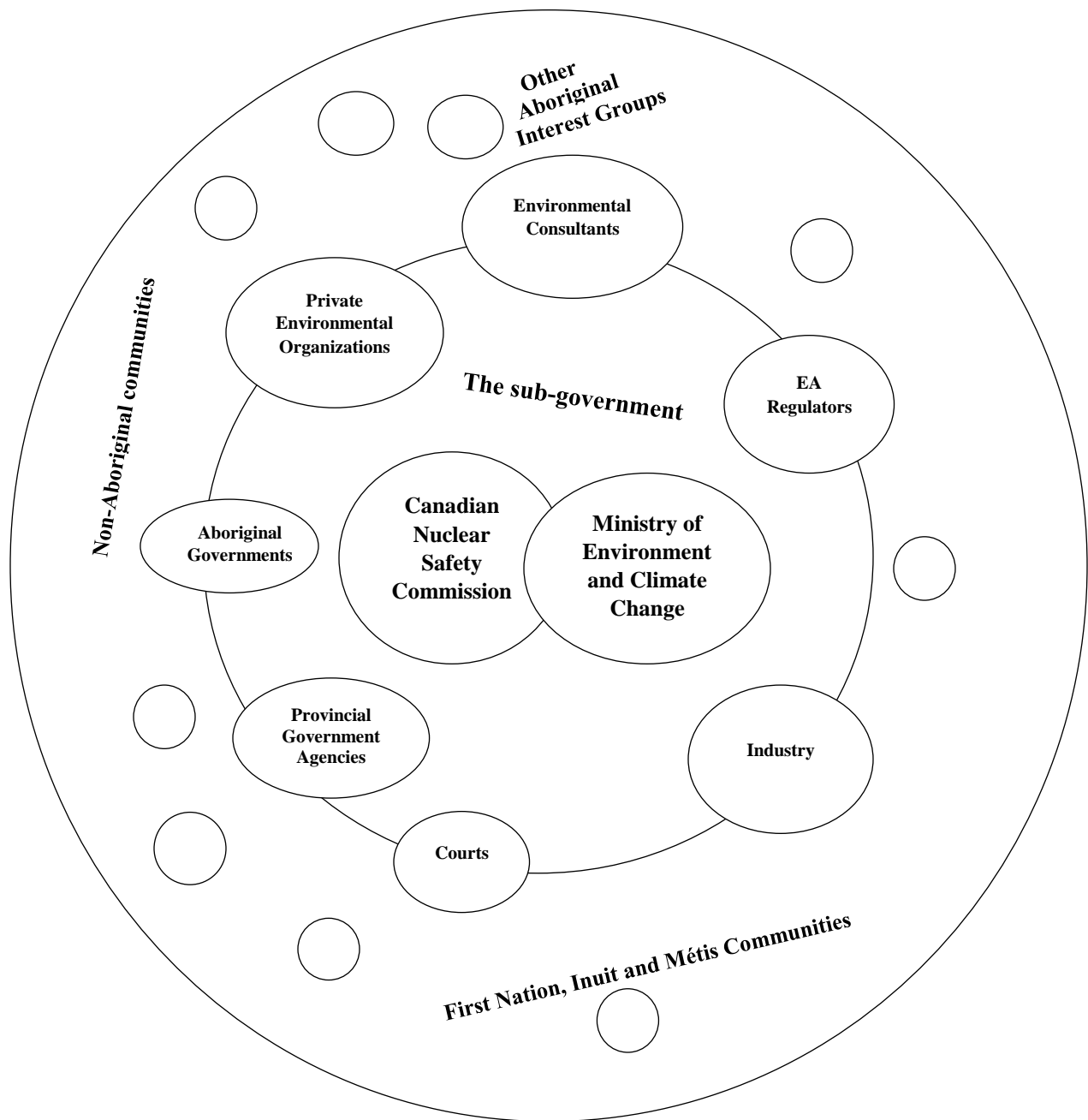


Figure 1.2: Policy Community Model (Redrawn and adapted based on Pross, 1990)

1.7 Thesis structure

This thesis adopts a ‘thesis by manuscript’ format. Each of the three manuscripts represents a thesis chapter. The thesis is formatted as per the formatting requirements of the School of Environment and Sustainability and the College of Graduate Studies and Research.

Chapter 2: Udofia, A, B Noble and G Poelzer (2016). Aboriginal Participation in Canadian Environmental Assessment: Gap Analysis and Directions for Scholarly Research. *Journal of Environmental Assessment Policy and Management*. Article submitted for review [World Scientific]. The chapter examines the evolution of participation in EA in Canada, and the extent to which scholarly research has contributed to solutions for meaningful Aboriginal engagement amidst increasing demands for a regulatory process that is more efficient and with shorter timelines for participation and decision-making. An online search engine database, *Scopus*, was used to generate all journal volumes and issues published between 1970 and 2015. Scopus was the preferred database due to its comprehensive coverage of notable scholarly research journals worldwide, including open access journals and conference proceedings with relevance to the scope of the research. Peer-reviewed articles specifically focused on Aboriginal participation and consultation in EA for resource development within the Canadian context, including articles on Aboriginal participation in EA outside of Canada, were reviewed. Much has been written on Aboriginal participation in resource development that was outside the scope of the search (e.g. Coates et al. 2015; Hanna, 2015; Eyford, 2013); however, the narrow focus on only EA literature and peer-reviewed scholarship was important so as to determine the scope of EA scholarly research on the subject, and research gaps regarding benefits, enduring challenges to, and improvement strategies for, Aboriginal participation in EA as understood by the EA scholarly community – those who often set the research and practice agendas for EA.

Chapter 3: Udofia, A, B Noble and G Poelzer (2016). Meaningful *and* efficient? Exploring the challenges to effective Aboriginal participation in environmental assessment. *Environmental Impact Assessment Review*. Article accepted for publication on April 5th 2016 [Elsevier].

The chapter examines the underlying practice-based challenges to meaningful and efficient Aboriginal participation in EA based on the experiences of stakeholders from industry,

government and communities involved in EA for mineral resource development in northwest Saskatchewan, Canada. This phase of the research adopted a case study strategy, which allows for a detailed examination of the phenomenon being studied (Yin, 2009). Though the case study method is sometimes critiqued for its lack of rigour leading to biased results and conclusions (Flyvbjerg, 2006), the use of the grounded theory approach serves to address this challenge. Using semi-structured interviews with 29 key informants, including government EA regulators, uranium industry representatives, Environmental NGO and community representatives, and adopting a policy community model to guide the study, ten dominant challenges to Aboriginal participation were identified, and concern issues of importance to addressing both meaningful and efficient participation. The chapter concludes by highlighting the importance of understanding the nature of these underlying challenges as a prerequisite to devising practical solutions as to how, and perhaps even whether, Aboriginal participation in EA that is meaningful and efficient to both Aboriginal communities and developers can be achieved. Although this manuscript approached EA as a practice, focused primarily on the meaningfulness and efficiency of Aboriginal participation during the application phase of EA - from the time the assessment process is triggered until the EIS is submitted, the scope of the issues emerging from the interviews pushed these boundaries with regards to meaningful engagement, identifying issues and expectations about what should happen before the formal EA process commences.

Chapter 4: Udofia, A, B Noble and G Poelzer (2016). Advancing Aboriginal participation in Environmental Assessment: Improvement strategies and Lessons from Practice. Article yet to be submitted for review. This third manuscript (Chapter 4), is based in part on a report published by the MacDonald Laurier Institute: Noble, B, A. Udofia (2015) *Protectors of the Land: Towards an EA process that Works for Aboriginal Communities and Developers*. Ottawa, ON: MacDonald Laurier Institute. Under the MacDonald Laurier Institute Author Agreement, “the author is free to reproduce the material they have produced for MLI on the proviso that they must always acknowledge in any subsequent use of the material that it was originally produced for an MLI project.” This last phase of the research draws upon the scholarly literature on Aboriginal participation in EA, empirical results from the northwest Saskatchewan case study, and supplemented by lessons drawn from recent project EA applications in Canada to identify enduring concerns facing Aboriginal participation in EA, and propose needful reforms to the current EA

system to ensure meaningful and efficient participation in EA. The chapter outlines what can be reasonably included in the scope of participation for project-oriented EA processes, other avenues to be explored to address broader strategic issues beyond the scope of EA, and needful changes in legislation and partnership building to ensure Aboriginal communities affected by development have the opportunity and the capacity to become meaningfully engaged in EA and decision making processes.

The thesis concludes with Chapter 5, “Summary of key research findings and conclusions”. This chapter revisits the overall research purpose and main findings emerging from the three manuscripts, and discusses the implications for advancing meaningful Aboriginal participation whilst meeting demands for an efficient EA regulatory process for resource development. The chapter also addresses specific recommendations to improve Aboriginal participation in EA process for uranium development futures in northwest Saskatchewan, Canada. The chapter concludes with future policy and scholarly EA research, and opportunities for broader applications of the findings from this research across a wider range of resource development projects in northern Saskatchewan and other communities in the Circumpolar North, including Russia, Norway and Sweden.

1.8 Co-authorship statement

Chapters two through four of this thesis consist of three co-authored manuscripts that either have been submitted and are under review for publication, accepted for publication or are being prepared for submission for publication. Although the manuscripts are in the form of co-authored manuscripts, I was the lead researcher and lead author for all three as per the College of Graduate Studies and Research Policy for manuscript style thesis¹². Intellectual guidance and support, including assistance with research design and interpretation of results, was provided by the co-authors. Similarly, co-authors reviewed and provided constructive feedback on, and revisions to, the draft manuscripts.

¹² <http://www.usask.ca/cgsr/policy-and-procedure/intellectual-property-rights-of-students.php>

1.8.1 Manuscript 1

This first phase of the research focused on examining the evolution of participation in EA in Canada, and the extent to which scholarly research has contributed to solutions for meaningful Aboriginal engagement amidst increasing demands for a regulatory process that is more efficient and with shorter timelines for participation and decision-making. The Scopus search code for the literature analysis was developed in collaboration with the co-authors; however, I took full responsibility for conducting the online search and led, with input from co-authors on appropriate literature groupings and themes, the identification and review of the dominant themes emerging from the review. The results were presented in draft form to the co-authors, who provided feedback and direction for further re-analysis of the study findings. I then submitted a complete draft of the manuscript to the co-authors for review. The final manuscript incorporates their suggestions, including in some instances further discussion of key topics, and detailed edits.

1.8.2 Manuscript 2

The second phase of the research focused on examining the underlying practice-based challenges to meaningful and efficient Aboriginal participation in EA based on the experiences of stakeholders from industry, government and communities involved in EA for uranium exploration projects in northwest Saskatchewan, Canada. The co-authors assisted with the identification of study participants and development of the interview template. I then assumed sole responsibility for conducting the interviews (in person, telephone). This included attendance at a community-held open house. First contact with Aboriginal community leadership was established by the thesis supervisors, but I then took the lead to make contact with other leaders and other community representatives throughout the study process. I transcribed and analyzed the interview data, but received input from co-authors on the themes that were emerging and options for their grouping and recoding. Draft results were then presented to the co-authors for review, and to assist with the identification of any potential additional themes or sub-themes. I then submitted a complete draft of the manuscript to the co-authors for review. The final manuscript incorporates their suggestions, including in some instances further discussion of key topics, and detailed edits. I assumed lead responsibility as well for presenting finding from the manuscript at the first Walleye Seminar on

Consultation and Engagement (Missinipe, 2014) and the Canadian Association of Geographers AGM (Vancouver, 2015).

1.8.3 Manuscript 3

For the third phase of the research, systemic reforms and enhancements to advance Aboriginal participation in current EA processes were proposed based on the findings from the scholarly gap analysis on Aboriginal participation in EA (manuscript 1), results from the northwest Saskatchewan case study (manuscript 2), and further review of concerns about recent EA regulatory practice that I conducted as a researcher, and co-author, for a MacDonald-Laurier Institute project. The manuscript combines my thesis research, from the first two manuscripts, with the research I completed for the MacDonald-Laurier Institute, to identify and discuss 10 recommendations, alongside several practical examples to support each recommendation, for more meaningful Aboriginal engagement in EA. I submitted a complete draft of the manuscript to the co-author for review. The final manuscript incorporates suggestions, including portions from the research report to the MacDonald-Laurier Institute. This manuscript has yet to be submitted for journal publication.

CHAPTER 2

ABORIGINAL PARTICIPATION IN CANADIAN ENVIRONMENTAL ASSESSMENT: GAP ANALYSIS AND DIRECTIONS FOR SCHOLARLY RESEARCH

Preface to Chapter 2

This Chapter examined the evolution of participation in EA in Canada, and the extent to which scholarly research has contributed to solutions for meaningful Aboriginal engagement amidst increasing demands for a regulatory process that is more efficient and with shorter timelines for participation and decision-making. The Chapter has been submitted for publication in the *Journal of Environmental Assessment Policy and Management*.

Abstract

There has emerged in recent years an increased industry and regulatory demand for the streamlining of EA to achieve a more efficient and timely EA process. At the same time, there are persistent demands, and expectations, by Aboriginal communities for more effective and meaningful engagement in development decisions. This paper examined the extent to which scholarly research has contributed to solutions for meaningful Aboriginal participation amidst increasing demands for a regulatory process that is more efficient and with shorter timelines for participation and decision-making. Three research priorities are identified based on an assessment of the peer-reviewed EA scholarly research: the need for empirical-based research assessing the impacts of streamlining on participation, and the impacts of meaningful Aboriginal participation on EA process efficiencies; the need for better defined scope of issues that can or should be addressed *inside* the EA process versus those that are best addressed external to EA; and the need to develop and test alternative mechanisms for Aboriginal participation at the regional and strategic levels, and their contributions to regulatory-based EA decisions.

2.1. Introduction

Environmental Assessment (EA), a process designed to identify and evaluate the potential environmental and social impacts of development projects, and propose impact management strategies that are in the best interest of the public (Wood, 2008), is now adopted in some form in 191 countries (Morgan, 2012). In Canada, EA is legislated at the federal level under the *Canadian Environmental Assessment Act, 2012*, and also under the laws of each of the provinces and territories. Across Canada's North, EA is also part of several Aboriginal land claims agreements, including the *Inuvialuit Final Agreement*, *James Bay and Northern Quebec Agreement*, and the *Nunavut Land Claims Agreement*. Aboriginal peoples are one of many interests who play a role in EA, alongside developers, regulators, environmental groups, and affected non-Aboriginal communities; but the participation of Aboriginal peoples has long been recognized as foundational to effective EA (Kirchoff et al., 2013; Booth and Skelton, 2011a; Whitelaw et al., 2009; Paci and Robb, 2002; Berger, 1977) – promoting, amongst other things, transitions toward sustainability and enhanced legitimacy in EA decisions and project outcomes (Prno and Slocombe, 2012; Clark et al., 2006; Palerm, 2000; Webler et al., 1995).

Participation is one of the most enduring themes in EA research, and advancing the meaningfulness of Aboriginal participation has been a major focus for EA scholars and practitioners (Noble and Hanna, 2015). Notwithstanding significant research progress, scholars have identified persistent, and long-standing challenges to meaningful Aboriginal participation in EA and have argued for earlier (Booth and Skelton, 2011a), more inclusive (Saarikoski, 2000), ongoing (Lawe et al., 2005), and collaborative approaches (Armitage, 2005). Aboriginal communities are similarly pressing for more meaningful participation in EAs to inform decisions and deliver benefits, whilst ensuring environmental protection and the preservation of traditional land uses and cultural values (Booth and Skelton, 2011b; Lajoie and Bouchard, 2006; Lawe et al., 2005; Wilson, 2002).

In an era of economic change, coupled with the drive for rapid resource development, particularly in the energy sector, EA is under increasing pressure from governments and industry to be a more timely and efficient process (Noble and Hanna, 2015; Bond et al., 2014; Gibson, 2012; McCrank, 2008). Proponents have long viewed EA as a burden in the licensing process (von Ritter and

Tsirkunov, 2003), and as a cumbersome process characterized by increasing expectations for consultation with communities and increased cost and timelines to secure development approvals (Voutier et al., 2008). Achieving EA processes that are meaningful at providing the opportunity for Aboriginal communities to shape the outcomes of resource development, yet efficient in accommodating the needs of proponents to obtain a decision in a timely and financially viable manner, is conceptually and politically challenging (Noble and Hanna, 2015; Kirchoff et al., 2013; Scoffield, 2012; Voutier et al., 2008). It is also much needed if EA is to be perceived as credible by those affected by development and by those proposing and regulating development (Noble and Udofia, 2015).

As pressures increase to ensure a more timely and cost efficient EA, alongside demands for more meaningful Aboriginal participation in development planning and decisions, it is necessary to examine how the scholarly community has approached Aboriginal participation in EA – specifically the dominant lines of inquiry and gaps in knowledge and understanding. This paper examined the extent to which scholarly research has contributed to solutions for meaningful Aboriginal participation in EA amidst increasing demands for a regulatory process that is more efficient and with shorter timelines for participation and decision-making. The applied focus was primarily on Canadian federal EA, where many of the drivers of regulatory change have concerned the participation of Aboriginal communities affected by resource development.

The sections that follow first provide a brief overview of the evolution of participation in EA in Canada as context to our analysis, identifying several key issues that helped shaped EA's development. The paper then examines the scope of published peer-reviewed scholarly research on Aboriginal participation in EA, identifying dominant research themes. This is followed by a discussion of the extent to which scholarly research has contributed to addressing the challenges of ensuring effective and meaningful Aboriginal participation in EA, alongside demands for more efficient EA processes. The paper concludes with suggested research directions for addressing the effectiveness of Aboriginal participation in an increasingly streamlined EA system - participation that is both meaningful to those affected and efficient for those seeking development approvals. Though much research exists on Aboriginal participation in resource development outside EA literature (i.e. Noble and Udofia, 2015; Eyford, 2013; Mitchell, 2012), the focus of this manuscript

was on understanding how the EA scholarly community itself has approached the subject. Such an understanding is particularly important to aid the identification of provisions and concepts required to strengthen and improve Aboriginal participation in EA, and to advance both EA scholarship and practice.

2.2. Aboriginal participation in Canadian EA: Evolution and influences

The focus was on Aboriginal participation in EA, versus government's legal obligation to consult with Aboriginal peoples. Participation and consultation are often used interchangeably in the scholarly literature – though they represent very different concepts. The term participation is used to refer to the *meaningful* interaction between proponents, authorities and affected Aboriginal communities in the EA process (Sinclair and Diduck, 2009), the goal of which is a more legitimate EA process and outcomes (Clark et al., 2006). Aboriginal consultation, in contrast, or the 'legal duty to consult', refers to Crown's legal obligations, under section 35(1) of the Constitution Act, 1982 (Canada Act 1982, c. 11), to consult with Aboriginal peoples regarding decisions over resource developments on indigenous lands that have the potential to negatively infringe on Aboriginal or treaty rights (Booth and Skelton, 2011a). Effectively, any consultation conducted by the Crown must be deemed as 'meaningful' and maintain the honour of the Crown whilst reconciling the interests of both the Aboriginal peoples and the Crown (Newman, 2014). In principle then, this obligation for free, prior and informed consent (FPIC) would occur prior to the commencement of an EA process (Hanna and Vanclay, 2013).

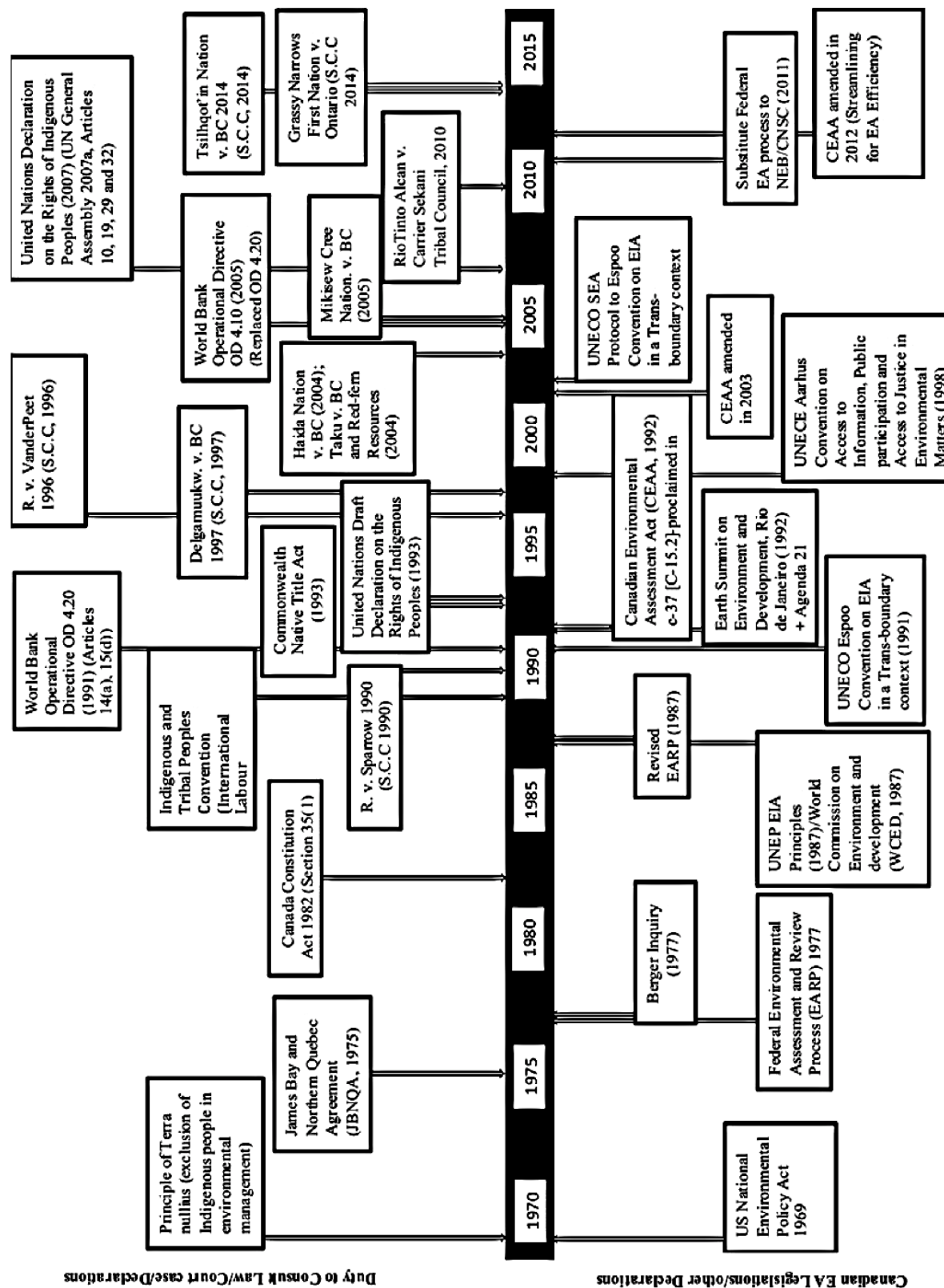
Though the legal duty to consult is owed by Crown, and is separate from the EA process, consultation requirements provided by the Crown guide the statutory requirements for Aboriginal participation found in EA legislations. As a direct effect, the Crown can often delegate project proponents, through the EA process, to assist in fulfilling the procedural aspects of consultation requirements through various EA participation strategies (e.g. provision of project information, open houses or site visits, community meetings, local involvement on project advisory boards) (Fidler, 2010; Natcher, 2001). Land (2014, p. 20) explains that "a fulsome assessment of environmental impacts will inevitably go a great distance to assessing impacts of a project on Aboriginal treaty rights as well." There is a pragmatic attractiveness to using the EA process to

realize, in part, the Crown's consultation requirements (Craik, 2016), but the responsibility to ensure the appropriate consultation and accommodation of Aboriginal people's rights, as regards to resource development, lies with the Crown and not with the project proponent.

The sections that follow provide, as context to the analysis, an overview of the major drivers, or influential factors, both from *inside* (e.g. EA legislation, regulatory reform) and *outside* (e.g. legal challenge, privatization) the formal EA system, that have shaped Aboriginal participation in EA, and some of the enduring concerns. Figure 2.1 identifies key developments influencing the evolution of Aboriginal participation in EA for resource development in Canada. These are certainly not the only factors that shaped Aboriginal participation in EA; however, these developments have had significant and lasting impact.

2.2.1 The formative years

Environmental assessment was first established in Canada under the Federal Environmental Assessment Review Process (EARP) in 1973 to inform decision makers about the potential impacts of proposed resource developments, and adopted as a Guidelines Order in 1984. The scope of EARP was broad, and included any initiative, undertaking or activity for which there was a federal decision making authority. At the time, EARP was also the only formal, federal process that provided a public window for debate over the potential impacts that accompanied major resource developments (Sadar and Stolte, 1996). The EARP provided that the public may be consulted during the development of guidelines for an EA, but early engagement was not mandatory (Dorcey, 1986). In practice, participation under EARP was narrow, involving short oral or written presentations to a formal review panel, and lacked in decision-making transparency. There were no provisions for Aboriginal engagement, or for the specific consideration of the impacts to Aboriginal traditional lands and culture. There were no guarantees that input from affected communities would be sought until after a project assessment was submitted for review and decision and, even at that point, the discretion of EARP remained broad (Bowden and Curtis, 1988).



As EA in Canada was emerging, there also emerged, external to the EA system, several major initiatives that would shape expectations about what Aboriginal participation in resource development should look like. Most notably was the Mackenzie Valley pipeline inquiry – the Berger Inquiry (Berger, 1977) – commissioned by the federal government to examine the social, cultural, economic and environmental impacts of a proposed pipeline that would run through the Yukon and the Mackenzie Valley of the Northwest Territories. The Berger Inquiry lasted three years and engaged dozens of Aboriginal communities to gauge their concern about the proposed Mackenzie Valley energy pipeline project. Justice Berger’s final report, *Northern Frontier, Northern Homeland* (1977), emphasized the importance of working meaningfully with Aboriginal communities to understand the impacts of development and recommended that pipeline development be delayed for 10 years, and that land-claims agreements be negotiated and settled prior to any pipeline development. What was most impactful was not Berger’s conclusions but rather how he arrived at them, taking the inquiry to 35 northern communities and villages and providing an opportunity for everyone to express their own concerns – whether about the pipeline or about broader industrial development and socioeconomic concerns. Bocking (2007) argues that Berger’s process shook conventional thinking by demonstrating that the best decision requires not just the right information, but also the right process, perhaps setting international expectations for the cross-cultural EA of resource developments (Gibson and Hanna, 2009).

2.2.2 Enhanced EA legislative support

From the mid-1980s to the mid-1990s, the importance of Aboriginal people’s involvement in resource development received increased attention in Canada and on the international scale, due in part to initiatives such as the World Commission on Environment and Development Summit (1987) and the International Labour Convention on Indigenous and Tribal Peoples in Independent Countries (1989). In Canada, the federal government’s response was an increased commitment to Aboriginal participation in resource development, including, among other things, the establishment of participant or intervenor funding programs in EA to provide financial support to affected communities to participate in the review of major projects. Perhaps the most significant development was the introduction in 1992 of Bill C-13, the *Canadian Environmental Assessment Act* (CEAA, C-15.2), proclaimed in force in 1995, to replace EARP. The Act introduced new

requirements for participation throughout the EA process, including new requirements for issuing public notice of an EA application and making EA documentation available in a public registry. However, the Act was narrower in scope than EARP. Whilst EARP could be applied to any initiative, undertaking or activity for which there was a federal decision making authority, CEAA was restricted to a defined list of physical undertakings, or projects such as mine developments, hydroelectric facilities, or pipelines. The result, explain Kirchoff et al. (2013), was that many smaller-scale resource development initiatives, including those that occurred on Aboriginal lands, were excluded from EA.

2.2.3 Legal challenges and redefining the nature of Aboriginal participation

Revisions to federal EA in Canada occurred again in 2003, providing for the specific incorporation of Aboriginal traditional knowledge in EA – a provision that, by this time, had been implemented in many provincial and territorial EA systems (Lajoie and Bouchard, 2006). However, notwithstanding a growth in legislative support for participation in EA, Doelle and Sinclair (2006) report that EA struggled to deliver on the promise of meaningful participation. Internationally, the early and meaningful engagement of Aboriginal peoples is recognized by (FPIC), outlined in UNDRIP (UN General Assembly, 2007) and in the International Labour Organization (ILO) Convention 169 (see Hanna and Vanclay, 2013). Article 23 of UNDRIP, for example, refers to the engagement and consent of indigenous peoples prior to the approval of any project affecting their lands and resources. Canada is a signatory to UNDRIP, considering its endorsement to be an aspirational goal (see Engle, 2011), but is not a signatory to ILO 169 – considered to be the only international, legally binding document regarding the rights of indigenous peoples (Hanna and Vanclay, 2013).

In Canadian practice, the participation of Aboriginal peoples in project planning, and in environmental management more broadly, frequently results from conflict that emerged due to recurring failure to meaningfully involve them in decisions that affected their traditional lands and way of life (O’Faircheallaigh, 2006). Such failures led to recurring disputes, legitimate activism and protests by Aboriginal communities seeking to emphasize contentious issues (Maclean et al., 2015), and an overall dissatisfaction with the EA and licensing process (Hanna et al., 2014; 2016). Land (2014, p. 22) describe the situation as an “escalating drift...towards more litigation arising

from conflicts over Aboriginal consultation”. This was evidenced by several legal challenges concerning Aboriginal peoples and resource development, largely focused on the adequacy of engagement undertaken by governments, and not necessarily restricted to the federal EA process (see Booth and Skeleton, 2011b). In 2009, for example, the West Moberly First Nations challenged the province and British Columbia and First Coal Corporation over what they believed to be a failed EA process, specifically regarding the potential impact of mining on caribou habitat and the extent to which the First Nation’s concerns had been taken into consideration during the EA process. The Court’s ruling was in favour of the First Nation, noting that engagement of the First Nation was not meaningful and that the First Nation’s concerns about impacts to caribou were not accommodated.¹³ In this case, the litigation had an important role in positively influencing the EA process and mitigation measures.

2.2.4 Privatized impact and benefit agreements

Parallel to changes in EA requirements, and partially in response to mounting court challenges by Aboriginal interests, there emerged outside EA a form of privatised negotiated agreements, or impact benefit agreements (IBAs), designed to establish formal, often legally-binding relationships between project proponents and affected Aboriginal communities (Sosa and Keenan, 2001). These agreements, often in the form of employment commitments or revenue sharing with Aboriginal communities in exchange for their cooperation and support for a project, have been described as an innovation designed to deal with many of the criticisms of EA (Klein et al., 2004; Sosa and Keenan, 2001) – particularly its failure to meaningfully include Aboriginal communities early in the development process (Galbraith et al., 2007). IBAs provide Aboriginal communities the opportunity for earlier involvement in project planning and development, and potentially greater opportunity to influence the management of development activities on their traditional lands than what is achievable through EA (Whitelaw et al., 2009; Galbraith et al., 2007). Selected agreements established in Canada that provided for enhanced Aboriginal participation in EA include the Ekati, Diavik, and Snap Lake diamond mines in the Northwest Territories, the Voisey’s Bay nickel mine in Newfoundland and Labrador, and the Horizon Oil Sands Project in Alberta.

¹³ See *West Moberly First Nations v. British Columbia (Chief Inspector of Mines)*, 2010 BCSC 359 (March 19, 2010). Reasons for Judgment

Although legally required in some instances under the authority of Aboriginal land claims agreements (e.g., Nunavut land claims; Gwich'in and Sahtu land claims, Northwest territories) (Armitage, 2005), in regions without established claims such agreements are often negotiated at the discretion of the project proponent – usually to ensure greater certainty for project proponents (Dare et al., 2014; Prno and Slocombe, 2012). In the case of the Tahltan First Nation, British Columbia, for example, Noble and Fidler (2011) report that the negotiated agreement assured certain benefits to the Tahltan in return for their support for the project during the EA process. Although agreements can ensure early relationship building with Aboriginal communities (Fidler and Hitch, 2007), they may also be used as a means to limit the opportunity for Aboriginal communities to challenge a project during the EA process itself (Noble and Udofia, 2015).

2.2.5 Regulatory reform for improved efficiency

In recent years, considerable attention has been placed on the efficiency of EA – ensuring reduced cost, shortened timelines, and greater certainties for project proponents. In 2007, for example, a federal directive was issued concerning the Canadian northern regulatory system to improve the timeliness of EA reviews and create opportunities for resource development (McCrank, 2008). In 2012, perceiving inefficiencies in federal EA as a barrier to economic development, the federal government included provisions in its federal budget implementation bill (Bill C-38, the Jobs, Growth and Long-term Prosperity Act) to replace the existing federal EA Act with the *Canadian Environmental Assessment Act, 2012* (Becklumb and Williams, 2012; Damman and Bruce, 2012). Ensuring an expedited review process and removing barriers to resource development ventures, such as the highly contested Enbridge Northern Gateway project, were amongst the primary drivers for the new Act (Noble and Hanna, 2015).

Included amongst the purposes of the new Act and its supporting regulations were new commitments to promote communication and cooperation with Aboriginal peoples with respect to EA (sec 1(d)), including explicit provisions that EA may take into account Aboriginal traditional knowledge (sec 19(3)). These changes occurred at a time when there was also growth in good-practice guidance for Aboriginal consultation in government decision-making (e.g. Ministry of Northern Development and Mines, 2008), and guidance for Crown consultation with Aboriginal peoples (e.g. Government of Saskatchewan Consultation Framework Policy; Government of

Ontario Guideline for Consultation of Aboriginal peoples). Damman and Bruce (2012) report that the new Act explicitly addressed the interests of Aboriginal peoples, but significantly limited the scope of projects that would be subject to EA. Kirchoff et al. (2013) estimated that than 95% of projects that required EA under the old Act would now be exempt from it, meaning fewer opportunities for Aboriginal communities to participate in decisions about resource developments with the potential to affect their lands and livelihoods.

2.3. Methods

To examine the nature and scope of research attention given to the evolving context of Aboriginal participation in EA, an analysis of the EA peer-reviewed journal literature was undertaken using the database Scopus. Scopus was the database of choice because of its indexing, coverage, advanced search options, and the ability for other researchers to replicate our search process (see Leung et al., 2015). The temporal scope of our search was from 1970, following the introduction of the United States National Environmental Policy Act, to present. The search strategy was comprised of three stages:

1. An initial search was conducted based on at least one of ‘participation’, ‘involvement’, ‘engagement’, ‘consultation’, ‘impact benefit’, ‘negotiated agreement’, ‘social license’, as well as ‘impact assessment’, ‘cumulative effects assessment’, ‘environmental assessment’ or ‘strategic environmental assessment’ appearing in the paper’s title, abstract or keywords. This search returned 1,642 results.
2. Given the focus of our analysis, on research specific to Aboriginal participation, the search was refined to identify articles that included also a focus on ‘First Nations’, ‘Métis’, ‘Inuit’, ‘indigenous’, ‘Aboriginal’, ‘Native’, or ‘traditional knowledge’. This resulted in a total of 447 articles. The search parameter, using the Scopus advanced search code, was as follows:

TITLE-ABS-KEY ({participation} OR {involvement} OR {engagement} OR {consultation} OR {impact benefit} OR {negotiated agreement} OR {social license}) AND TITLE-ABS-KEY ({First Nation} OR {Métis} OR {Inuit} OR {Indigenous} OR {Aboriginal} OR {community} OR {Native} OR {traditional

knowledge})) AND TITLE-ABS-KEY ({impact assessment} OR {cumulative effects assessment} OR {environmental assessment} OR {strategic environmental assessment})) AND DOCTYPE (ar OR re) AND PUBYEAR > 1969 AND PUBYEAR < 2017

If one the key search terms, based on the above search parameters, did not appear in the title, abstract or keywords, then the article was not included in our review. This is not to say that Aboriginal participation and EA was not discussed in the paper; rather, it was considered not to be the paper's focal point.

3. A manual scan of the papers was then conducted, focused on the paper's abstract, to identify those articles either focused specifically on case studies or analyses of Aboriginal participation in EA within the Canadian context, or articles focused on Aboriginal participation that were not jurisdiction-specific and of relevance to the Canadian context (i.e., review articles). This resulted in 112 articles.

A content analysis approach (see Creswell, 2013) was used to review all articles to identify what we considered to be the common, and dominant, themes that have been the focus of the EA scholarly community regarding EA and Aboriginal participation from 1970 to present. Articles were coded and re-coded to derive what we believe captures the dominant themes in research on Aboriginal participation in EA. It is acknowledged that the search is not comprehensive of all scholarly literature on the subject. For example, the search was limited to journals registered in Scopus and it is acknowledged that a considerable body of knowledge on Aboriginal participation in EA exists external to the scholarly journal literature, including policy documents and technical reports. However, the approach - though not inclusive of all literature on the subject - resulted in a good sample of literature to examine how research by the EA scholarly community on Aboriginal participation has evolved over time, to identify how the EA scholarly community has contributed to solutions for meaningful Aboriginal participation, and to identify existing strategies and concepts of relevance to strengthening and improving Aboriginal participation in EA that are receiving much less EA scholarly and policy attention.

2.4. Results

Scopus search results returned few papers published prior to the mid-1990s that met our search criteria. Of those papers published during the first 25 years of EA that addressed Aboriginal participation, many were following-up to, or revisiting, the Berger Inquiry (e.g. Usher, 1982), or explored emerging legal and regulatory issues surrounding public involvement (e.g. Lucas, 1976) but not with a specific focus on Aboriginal participation per se. There were some exceptions, such as Shapcott (1989), who addressed the implications of EA for Aboriginal peoples, but not Aboriginal participation in EA, focusing primarily on Aboriginal interests in relation to land claims and broader natural resources management.

Approximately 90% of articles identified were published within the last 20 years, between 1996 and 2015; approximately 60% were published within the last 10 years. Some of this recent growth may simply be a reflection of the growing numbers of scholarly journals publishing on this topic; however, aside from the *Journal of Environmental Assessment, Policy, and Management* (n = 10 articles), the main journal titles identified that published research focused on Aboriginal participation in EA have been around since 1990 or earlier: *Environmental Impact Assessment Review* (n = 42 articles), *Impact Assessment and Project Appraisal* (n = 23 articles), *Journal of Environmental Management* (n = 8 articles), and *Environmental Management* (n = 7 articles).

The recent growth in research addressing Aboriginal participation in EA may not be surprising; topics such as early and ongoing participation, local capacity, and the inclusion of traditional knowledge have also received increasing attention outside the scholarly community, particularly as governments and industry push for more streamlined and efficient project review processes alongside increasing recognition of the importance of Aboriginal lands and treaty entitlements (Kirchoff et al., 2013; Gibson, 2012; Booth and Skelton, 2011a). Articles that addressed the streamlining of EA (n = 10 articles) were amongst the more recent articles that also addressed Aboriginal participation.

All articles could be grouped into one of three broad thematic research areas that emerged from the coding and review process: i) research focused on the challenges to effective Aboriginal participation; ii) research addressing the benefits of Aboriginal participation; and iii) research

proposing or evaluating strategies, frameworks or methods for improved Aboriginal participation. Within each theme, a number of recurring topics or sub-themes were also identified (Table 2.1). Each of these three thematic areas is synthesized below. These themes and sub-themes may not be comprehensive of *all* EA research focused on Aboriginal participation, and they are a product of our analysis and own understanding of the literature.

Table 2.1: Key research themes and recurring topics on Aboriginal participation in EA

Themes ¹	Recurring topics or issues	Examples
Challenges and barriers to meaningful participation	Capacity to participate; social and institutional change	Baker and McLelland 2003; O'Faircheallaigh and Corbett 2005; Natcher and Davis 2007; Galbraith et al. 2007; O'Faircheallaigh 2007; McCrank 2008; Whitelaw et al. 2009; Angell and Parkins 2011
	Communication and information sharing	Lawe et al. 2005; Lajoie and Bouchard 2006; O'Faircheallaigh 2007; Durnik 2008; Whitelaw et al. 2009; Booth and Skelton 2011a,d; Noble and Birk 2011; Hanna et al. 2016
	Timeliness and streamlining	Voutier et al. 2008; Lostarnau 2011; Gibson 2012; Noble et al. 2013; Olsen and Hansen 2014; Kirchoff and Tsuji 2014
Benefits of meaningful participation	Sustainability, community empowerment, access to resources	Meschtybe et al. 2005; Armitage 2005; Doelle and Sinclair 2006; O'Faircheallaigh 2006; Esteves 2008
	Social and mutual learning	Wiles 1999; Veiga et al. 2001; Baker and McLelland 2003; Wilkins 2003; Stewart and Sinclair 2007
	Social license, local autonomy and process legitimacy	Voutier et al. 2008; Fidler 2010; Noble and Birk 2011; Prno and Slocombe 2012; Nakamura 2013; Dare et al. 2014
Participation improvement strategies	Collaborative and deliberative approaches	Sherry and Myers 2002; Wilkins 2003; Armitage 2005; Doelle and Sinclair 2006; Fitzpatrick et al. 2008; Ellis 2005; Booth and Skelton 2011b; Salomon and Hoberg 2014
	Regulatory reform	Sinclair and Fitzpatrick 2002; Galbraith et al. 2007; Voutier et al. 2008; Gibson 2012; King and Cruickshank 2012; Hanna et al. 2014
	Regional or strategic approaches	Lajoie and Bouchard 2006; Fidler and Noble 2013; Noble et al. 2013

¹ Several articles addressed more than one theme.

2.4.1 Research addressing challenges to Aboriginal participation

First, there is a significant body of scholarly literature assessing the state of Aboriginal participation in EA, the majority of which identifies and explores enduring concerns about the nature, timing and quality of participation (Booth and Skelton, 2011a; Whitelaw et al., 2009; Lajoie and Bouchard, 2006). Approximately 58% of articles we identified could be categorized

under this theme. Several focused on a number of enduring issues, such as the lack of capacity to ensure meaningful participation (Whitelaw et al., 2009; Baker and McLelland, 2003) and insufficient funding for communities to engage in EA activities (Sinclair and Diduck, 2009); and poor government-industry-Aboriginal community relations (Durnik, 2008; Lajoie and Bouchard, 2006; Lawe et al., 2005), often resulting in a community's lack of understanding about a project or the EA process (O'Faircheallaigh, 2007) or a proponent's poor understanding of Aboriginal community expectations about participation processes (Noble and Birk, 2011).

Other authors focused on the relationships between resource development and social issues affecting Aboriginal communities, and the often failure of EA to adequately address such issues through current community engagement practices (Angell and Parkins, 2011; O'Faircheallaigh, 2007), as well as looming challenges with structural reforms in EA and management broadly, despite the transfer of certain powers to Aboriginal peoples through treaty negotiations and the devolution of resource management (Natcher and Davis, 2007). The timelines established for Aboriginal participation in the EA process, namely the late stage of involvement, was also a crosscutting issue that emerged in many articles (e.g. Olsen and Hansen, 2014; Lostarnau, 2011; Voutier et al., 2008). We also found that in recent years there has emerged a critical, but largely non-empirical, body of research focused on efforts to reform and streamline EA systems and requirements, and the potential implications for, among other things, meaningful Aboriginal participation (Salomons and Hoberg, 2014; Kirchoff et al., 2013; Gibson, 2012). Generally, the collection of articles under this theme focused on how participation is practiced, often drawing on case studies, and suggesting the need for more participation and better strategies.

2.4.2 Research focused on the benefits of meaningful Aboriginal participation

Research focused on the benefits of Aboriginal participation in EA comprised 23% of articles. Recurring topics included the role of participatory and deliberative democracy in relation to, among other things, sustainability, community empowerment and increased access to resources (O'Faircheallaigh, 2006; Doelle and Sinclair, 2006; Meschtybe et al., 2005). Social and mutual learning was another common topic (Wiles, 1999; Veiga et al., 2001), emphasizing the value added to Aboriginal communities and proponents achieved through interactive assessment and decision processes (Booth and Skelton, 2011b; Fitzpatrick et al., 2008), and through continued involvement

in post-EA monitoring programs (Noble and Birk, 2011). Topics appearing more frequently in the past decade include the enhanced legitimacy of development achieved through meaningful Aboriginal participation (Nakamura, 2013; Fidler, 2010), and earning a social license to operate through community engagement (Dare et al., 2014; Prno and Slocombe, 2012). This collection of articles focused primarily on the need for and importance of early and ongoing Aboriginal participation. Though the concepts of learning, sustainability and social license in EA were addressed primarily in papers published within the last decade, many of the discussed benefits of Aboriginal participation, such as mitigating litigation, reducing conflict and delays, and improved impact management have been a sustained focus in the EA scholarly literature.

2.4.3 Research on Aboriginal participation improvement strategies

Research under this theme accounted for about 20% of articles. Given the enduring challenges to Aboriginal participation in EA, authors have persistently questioned the meaningfulness of participation, calling for improvements to EA participation processes (Booth and Skelton, 2011a; Noble and Birk, 2011; O’Faircheallaigh, 2007; Galbraith et al., 2007; Armitage, 2005). The primary areas of focus have been on promoting more deliberative and collaborative approaches to planning and decision-making (Ellis, 2005; Wilkins, 2003), consensus-building as a means to ensure more equitable participation (Maclean et al., 2015), and the enhanced consideration of community and Aboriginal traditional knowledge (Booth and Skelton, 2011b; Sheery and Myers, 2002; Usher, 2000). Regulatory reforms, or changes to participation processes and provisions, also emerged as a common topic, with many authors arguing for changes to strengthen and improve Aboriginal participation requirements in EA (Hanna et al., 2014; King and Cruickshank, 2012); whilst others addressed the need to simplify regulatory processes due to cumbersome and unwieldy participation requirements (Voutier et al., 2008). The need, and opportunity, for enhanced Aboriginal participation through higher-order, regional and strategic EA processes was also a topic (Fidler and Noble, 2013; Lajoie and Bouchard, 2006), though primarily in the past decade and receiving much less attention than participation in traditional, project-based EA. Across all of these topics, most authors emphasized the importance of early and ongoing dialogue between proponents and Aboriginal communities and governments prior to the initiation of EA, and continuing participation post-project implementation.

2.5. Research gaps and directions

The literature survey resulted in the identification of three common EA themes or research clusters, each consisting of several related topics addressing Aboriginal participation. Considering the evolution of Aboriginal participation in EA in Canada, however, and the enduring challenges to meaningful Aboriginal participation, several research gaps, and thus needed directions in scholarly research, are also evident. Each of these research gaps and directions is discussed below. It is argued that addressing these gaps is important to realizing the benefits of Aboriginal participation in EA, and ensuring that the scholarly community is making the necessary contributions to understand, and advance, current policy and practice.

2.5.1 Assessing the real impacts of EA streamlining on meaningful Aboriginal participation

First, a new challenge to Aboriginal participation has surfaced in the EA literature that has not received sufficient research attention – the implications of streamlining EA processes, and whether and how meaningful participation can be achieved in an increasingly streamlined EA system. Environmental assessment in Canada, and internationally, has been under increasing pressure to be more efficient and cost effective (McCrank, 2008; Voutier et al., 2008), and “governments have sought to streamline impact assessment...to counter concerns over the cost and potential for delays to economic development” (Bond et al., 2014, p. 46). We observe that many researchers have argued that streamlining EA, and tightening the timelines for EA processes and participation, will compromise the effectiveness and the legitimacy of EA (Doelle, 2012; Gibson, 2012), but few scholars have provided empirical evidence of the impacts or viable solutions to the perceived problem.

Commenting on changes to Canadian federal EA, for example, Kirchoff et al. (2013, p. 5-6) argue that “...from an Aboriginal perspective, the changes introduced with the CEAA, 2012, followed by a number of other recent government initiatives, further weaken Aboriginal Peoples’ capacity to participate”, making it “...more difficult for remote and/or isolated Aboriginal communities to fully participate in the environmental assessment process due to logistical constraints.” Doelle (2012, p. 17) characterized recent streamlining under federal EA in as “the end of federal EAs as the concept of EA is envisaged in the literature,” with other researchers arguing that any

restrictions to EA that has the potential to limit the inclusion of potentially affected stakeholders, particularly Aboriginal communities, leads to a constrained EA (Salomons and Hoberg, 2014; Whitelaw et al., 2009). Such arguments have been countered, however, by others who identify industry concerns that growing expectations for participation have the potential to increase timelines associated with project approvals, place economic development opportunities at risk, and create participation fatigue in communities in resource development-intense regions (Noble and Udofia, 2015; Noble et al., 2013; Voutier et al., 2008).

Concerns persist about the impacts of streamlining on meaningful participation, and about the demands placed on project proponents to ensure more participation, but we found limited empirical research focused on identifying and evaluating the actual impacts of streamlining on participation; neither did we find much on whether increased Aboriginal participation, or consensus-based approaches to EA, have resulted in significant project delays. Noble and Udofia (2015, p. 22) argue that the “meaningful engagement of Aboriginal communities is unlikely to threaten the efficiency of EA; however, poor engagement or the lack of engagement will invariably cause regulatory delays and add unnecessary costs to project proponents.” The current reality is that EA systems in Canada and globally (Bond et al. 2014) have been subject to streamlining measures to reduce time and cost delays; there is a need to focus on strategies for meaningful Aboriginal participation whilst still ensuring a reasonable timeline for development decisions. Several strategies have been identified in the literature, including, for example: strengthened requirements for the FPIC of Aboriginal peoples in development planning, including co-developing the terms of reference for assessment; greater and longer-term investments in capacity funding for Aboriginal communities to engage in EA and remain engaged post-project approval; and a stronger role for both Aboriginal peoples and social scientists in assessment and decision-making processes (Westman, 2013; Hanna et al., 2014; Noble and Udofia, 2015).

2.5.2 The need for clarity on the scope and expectations of participation inside EA

Second, the benefits and importance of Aboriginal participation in EA are well argued, but we observe that the EA literature remains silent on what *can*, and what *cannot*, be meaningfully addressed within the scope of project-based EA participation processes. Aboriginal communities

rightfully expect that potential impacts to their recognized treaty rights are considered during decisions about resource development (e.g. Galbraith et al., 2007; O’Faircheallaigh, 2007; Lajoie and Bouchard, 2006; Wismer, 1996); however, project-based EA is not an appropriate venue to resolve long-standing, contested land use or treaty rights – issues beyond the scope and control of project proponents (Noble and Udofia, 2015). The problem, explains Booth and Skelton (2011c), is that for many Aboriginal people there are much larger issues than the project on the table when they engage in the EA process, but there are few venues other than the EA process to grapple with those issues.

Some of the issues that emerge during an EA concern debates about the types of development most appropriate in a particular region, resource rights, and larger policy, land use planning, and even constitutionally based issues concerning land titles (Noble and Udofia, 2015; Tollefson and Wipond, 1998). These are issues that the EA process, at least in its present form, is not equipped to resolve – particularly within the scope of a single resource development project (Noble et al., 2013). The result, argues the Assembly of First Nations (2011), is that in too many circumstances, First Nations are forced to resort to litigation because the EA process does not adequately consider Aboriginal and treaty rights, yet First Nations are not meaningfully involved in legislative or policy development. The loading of expectations on participation in EA may, in part, be some of the reason for concerns about, or at least perceptions about, the lack of impact and the inefficiencies of, and delays caused by, participation processes.

One response, evident in both research and practice, is the rise of privatized agreements, negotiated *outside* EA and in advance of formal project applications (Veiga et al., 2001), as a means for project proponents to address many of the concerns of Aboriginal communities and secure their support for a project (Noble and Fidler, 2011). The problem, however, is that whether such agreements, negotiated in advance of EA, contribute to more meaningful participation or simply undermine participation during the EA process has received very little attention by scholars (Noble and Hanna, 2015). Not all issues concerning resource development can be appropriately addressed through EA, but neither should all issues be unloaded to privatized agreements negotiated in advance of the EA process (Noble and Udofia, 2015).

Affected Aboriginal communities are demanding the right things, such as the protection of traditional rights and broad debate about whether a particular form of development is appropriate; but EA, as currently constructed, is far from the best forum to address such strategic issues and concerns. We observe that the scholarly literature has done a very good job of arguing the need for more Aboriginal participation in EA, and reporting case studies of privately negotiated agreements, but it has come up short on providing direction on what types of issues are clearly beyond the scope of the EA process. The scholarly community, in collaboration Aboriginal communities, proponents, and regulators, need to explore and better define expectations regarding participation *inside* the EA process, and what can be meaningfully achieved within the scope of a project-oriented assessment. Of course, part of the challenge to providing such clarity is addressing the diversity of expectations concerning what EA is and should be about (see Cashmore, 2004).

2.5.3 Identifying opportunities for more meaningful, versus more, participation

Finally, a persistent message in the scholarly literature and practice is the importance of FPIC and the need for more meaningful participation by Aboriginal communities in processes and decisions that affect their traditional lands and resources (Hanna and Vanclay, 2013; UN General Assembly, 2007; O’Faircheallaigh, 2007). There has been some attention given to the necessary reforms to make this happen, including redesigning participation in EA to ensure greater collaboration and consensus-based approaches early in the project development process (e.g. Maclean et al., 2015; Doelle and Sinclair, 2006; Armitage, 2005). However, there has been limited attention to exploring opportunities to transfer certain aspects of Aboriginal participation from project-based EA to earlier and more strategic forms of planning and assessment - specifically regional or strategic EA.

There are many enduring challenges to meaningful participation in EA; two in particular illustrate the need to rethink the current project-by-project approach. The first challenge concerns the timing of Aboriginal participation in EA and the recognized need for earlier, ‘front-end’ engagement. The inherent focus of participation on specific project developments, and the late timing of engagement in the development process, limits its influence on the nature and path of resource development (Noble et al., 2013; Harriman-Gunn and Noble, 2009). Notwithstanding governments' attention of FPIC or, in Canada, the legal duty to consult, its implementation at the onset of the EA process is

too late in the planning and development cycle to be meaningful. Further, in many jurisdictions, project proponents themselves are not obligated to engage communities until well into the planning stages of the project, and sometimes only after an EA is submitted for regulatory review (Sinclair and Fitzpatrick, 2002). This is too late for meaningful participation, and for obtaining and maintaining a social licence to operate (Dare et al., 2014; Prno and Slocombe, 2012). Participation needs to occur early, at the policy and planning stages of development, before project EAs become reality.

The second challenge concerns issues reportedly faced by industry in meeting participation requirements, and the burdens subsequently placed on communities to be engaged – particularly in regions characterized by intense resource development. Industry proponents sometimes view the current requirements for participation in project applications and reviews as a cumbersome regulatory hurdle without achieving, in most cases, substantial benefits for either the proponent or the public (McCrank, 2008; Voutier et al., 2008; Harrison, 2006). In Canada’s western Arctic, for example, Noble et al. (2013) report concerns by industry about the need for repeated consultation with Inuvialuit communities for multi-project operations; however, they also report community frustration and capacity constraints due to increasing demands to consult on projects that are similar in design and nature, but each requiring its own, separate participation process.

Combined, these challenges, along with others, suggests the need to explore alternative models of participation, focused on earlier engagement through regional and strategic EA, when alternative options for development are still viable and broader policy issues open for debate. Not only would participation through regional or strategic EA provide opportunities for more influential processes as policies or plans for resource development are formulated, it may also provide for more efficient Aboriginal participation at the individual project-level (Noble et al., 2013) – where the focus can be on specific project-based issues rather than dealing also with broader strategic concerns that are beyond the reach of project proponents and EA decisions. The need for earlier participation through regional or strategic EA has received some attention in the scholarly literature (e.g. Noble et al., 2013; Sims, 2012; Lajoie and Bouchard, 2006), but such processes are currently outside the scope of legislation or regulatory requirements in most Canadian jurisdictions. As such, the realized benefits of transferring a degree of Aboriginal participation in EA to regional or strategic-

level processes remain untested, and the potential legal implications concerning proponent and government consultation requirements unexplored. Ensuring meaningful participation through regional or strategic EA requires not only stronger commitments to Aboriginal participation, but also a willingness of governments to engage in open and public debate about development at a level where broader policy and resource development plans, as opposed to individual projects, are on the table. Arguably, this is the greatest challenge since it requires institutional change and new ways of thinking based on more collaborative decision making about resource development priorities.

Progress is being made in some jurisdictions. The Norwegian Mineral Act 2009, for example, created a formalized mechanism for the Sámi Parliament to participate in environmental review processes, including those linked to the government's strategic plans and policies. The Norwegian emphasis on early consultation (see Fidler and Noble, 2012), reflected also in the Finnmark Act, 2005, transferring 95 percent of Finnmark to the Sámi in response to Sámi demands that their rights to land and water be better acknowledge, suggests that strategic EA has significantly strengthened the efficacy of the Sámi's involvement in resource development and enhanced the legitimacy of EA processes.

As efforts continue to streamline EA processes, resulting in less opportunity for participation (Gibson, 2012) and a narrower scope of EA application (Kirchoff et al., 2013), we suggest an immediate research need to explore alternative mechanisms for participation at the regional and strategic levels, and to propose viable means by which such participation can inform regulatory-based, development decisions. Doing so will help ensure that EA processes meet the needs and expectations of Aboriginal peoples “for an inclusive process that respects their unique place within the legal and political fabric of Canada” (CIER, 2009, p. 3). A fundamental principle of FPIC is that participation allows for, and supports, meaningful choices by Aboriginal peoples about their development path (UN Sub-Commission on the Promotion and Protection of Human Rights, 2004) – a principle that is best met at the strategic and regional levels of policy and planning, versus on a project-by-project basis.

2.6. Conclusion

Since EA was first introduced in Canada in the early 1970s, the nature, scope and provisions for Aboriginal participation have evolved considerably – from non-legislated opportunities for comment, but with a scope that extended beyond projects to include also broader policy issues; to more legislated and entrenched requirements, but within the context of a more narrowly defined range of designated projects. Several developments have shaped this evolution, including legislated developments in formal EA systems, court challenges about EA processes and the impacts of development, and an emerging privatized approach to participation in resource development involving Aboriginal community-industry negotiations outside the formal EA process. Of particular focus in recent years is the demand from industry and regulators for more streamlined and efficient EA, paralleled by demands from Aboriginal communities for earlier and more meaningful engagement.

The importance of meaningful Aboriginal participation to effective EA is widely acknowledged in the scholarly literature, and EA scholars have addressed a variety of issues concerning participation, including the challenges to Aboriginal participation; the benefits of meaningful Aboriginal participation; and strategies or methods for improved practice. However, the analysis of the literature revealed that there has been limited direction on how to ensure meaningful participation in an increasingly streamlined EA regulatory environment. Given the continued pressures from both inside and outside EA for more efficient and more effective processes, research is needed on at least three key fronts: first, empirical-based research identifying the impacts of streamlining on the meaningfulness of participation, and the impacts of meaningful participation on ensuring a timely and efficient EA; second, identification of reoccurring issues raised during EA processes so as to explore and better define expectations regarding the scope of issues that can or should be addressed *inside* the EA process versus those that are best addressed external to EA; third, developing and testing alternative mechanisms for participation at the regional and strategic levels, and identifying the means by which participation through such processes can meaningfully influence regulatory-based development decisions. Such research must be collaborative in nature, drawing on the perspectives and experiences of multiple actors

including governments, regulators, project proponents, EA practitioners, and affected Aboriginal communities.

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CHAPTER 3

MEANINGFUL AND EFFICIENT? EXPLORING THE CHALLENGES TO EFFECTIVE ABORIGINAL PARTICIPATION IN ENVIRONMENTAL ASSESSMENT

Preface to Chapter 3

This Chapter examined the effectiveness of Aboriginal participation in EA and the implications for meaningful engagement and process efficiency based on stakeholder perceptions from industry, government, environmental NGO and Aboriginal communities involved in EA for mineral resource development in northwest Saskatchewan, Canada. The research was conducted in compliance with Tri Council Policy on Ethics involving human subjects. The Chapter has been accepted for publication in the journal *Environmental Impact Assessment Review*.

Abstract

This paper explored the underlying practice-based challenges to meaningful and efficient Aboriginal participation in environmental assessment (EA) - participation that provides meaningful opportunities for Aboriginal communities to shape EA, yet assures a degree of efficiency for project proponents who need to obtain EA approvals in a timely and financially viable manner. This is done based on an analysis of the EA policy community's experience with uranium exploration and mining in Saskatchewan, Canada. Many of the challenges to meaningful and efficient Aboriginal participation that emerged are multi-dimensional, often concerning participation processes, decision making, and relationships. Although scholars have explored many of these issues and have proposed numerous solutions, challenges persist in practice. Several other issues also emerged from our study that have received limited attention, including the non-commitment to early and ongoing participation by smaller project proponents, and the EA exemption of exploration projects; the limited availability of information to project developers on local right holders and Aboriginal interests; expectations about the integration of traditional knowledge and land use in EA not aligning with the information that is available to proponents; confusion about who is responsible for initiating early participation and consultation processes; the lack of early relationship building with potentially affected communities, particularly by

governments; and the lack of other viable avenues, outside EA, for Aboriginal communities to raise more strategic issues of concern that affect traditional lands and treaty rights.

Keywords:

Environmental assessment; Aboriginal participation; indigenous involvement; consultation; meaningful participation; efficiency

3.1. Introduction

The importance of indigenous peoples participation in environmental assessment (EA) is recognized internationally (Hanna et al., 2014; IFC, 2012; Nakamura, 2008), and Aboriginal participation is institutionalized in EA systems across Canada. The benefits of Aboriginal participation in EA are numerous, including improved project design, enhanced mitigation options, and increased legitimacy of development undertakings (Prno and Slocombe, 2012; Rozema et al., 2012; Johnson and Dagg, 2003). The challenges to Aboriginal participation are also widely documented in the EA literature (O’Faircheallaigh, 2007), including, for example, the limited financial resources often available to Aboriginal communities to support participation (Spectra Energy, 2014; Kwiatkowski et al., 2009); the late timing of participation in the project development cycle (Damman and Bruce, 2012); participation fatigue in intense resource development regions (Noble et al., 2013); and limited influence over project outcomes (Booth and Skelton, 2011a).

Aboriginal communities have persistently demanded earlier, sustained, and more meaningful participation in EA processes (Glucker et al., 2013; Lajoie and Bouchard, 2006; Lawe et al., 2005). The definition of meaningful participation in EA has never been prescribed by law in Canada (Booth and Skelton, 2011a, b); however, meaningful participation infers that those communities whose lands and traditional resources are potentially affected by development are intimately involved with the project planning, assessment and decision process, and work with project proponents and regulators to shape the manner in which impacts identified are addressed over the project lifecycle, from project design through project decommissioning and rehabilitation (Noble and Udofia, 2015). Industry and regulators, however, often maintain that meeting such EA

participation requirements and expectations is increasingly burdensome, arguing for greater efficiencies in participation (Olsen and Hansen, 2014; Voutier et al., 2008; Owens, 2004) – specifically faster and less cumbersome processes and, subsequently, shorter timelines for EA approval (Noble and Hanna, 2015; Bond et al., 2014).

Meaningfulness and efficiency are not necessarily the same thing, but they can coexist and result in EA participation that is considered meaningful by those impacted by development, and efficient by those proposing and regulating development. Part of the challenge is that there has been limited research examining the challenges and opportunities for *both* more meaningful *and* efficient participation in EA processes. Achieving meaningful participation of Aboriginal peoples in EA alongside a more efficient process for proponents has seldom been explored. Scholars have tended to focus on external tools or processes, such as privatized impact and benefit agreements, to accommodate for the shortcomings of the participatory EA process – namely, facilitating early engagement of affected communities and minimizing conflict and delays during project review and approval (Noble and Fidler, 2011; Galbraith et al., 2007). Improving Aboriginal participation in EA requires first an understanding of the nature and current challenges to both meaningful and efficient participation.

The purpose of this paper was to identify the underlying practice-based challenges to meaningful and efficient Aboriginal participation in EA – participation that is meaningful in providing the opportunity for Aboriginal communities to shape EA, and efficient in accommodating the needs of development proponents to obtain EA approval in a timely and financially viable manner. The focus was on the ‘front-end’ of the EA process, from pre-project planning to EIS approval, and on the perspectives of the various interests engaged in EA regarding meaningful and efficient participation. In doing so, the objective was to identify specific practice-based areas in need of research and policy attention if both meaningful and efficient Aboriginal participation in EA is to be realized, or even considered possible.

The analysis was based on current EA systems and practices in northwest Saskatchewan, Canada – home to the world’s highest-grade uranium mining operations, and a region with significant oil sands development potential. Though this research was set within the Canadian context, the

observations and lessons that emerged are applicable to understanding, and hopefully addressing, some of the underlying practice-based challenges to meaningful and efficient indigenous participation in EA in other resource development regions. The sections that follow first provide a brief discussion of the nature and role of Aboriginal participation in the Canadian EA system. This is followed by a description of our study area and research methods. Results are then presented, focused on what study participants identified as the main challenges to meaningful and efficient Aboriginal participation in EA, followed by a discussion of the implications of these for future EA participation practices.

3.2. Aboriginal participation in environmental assessment

Aboriginal interests are one of many interests in EA, alongside project proponents, government departments and agencies, environmental non-government organizations and affected non-Aboriginal communities, to name a few (Noble and Udofia, 2015). The various interests involved in EA can be conceptualized as a policy community (Pal, 2014), comprised of actors who share an interest in EA and its outcomes and who, over time, have shaped or attempted to shape EA processes (Stone et al., 2001). This policy community consists both of those who make decisions and of those outside formal decision making institutions who seek to influence decisions (Pross, 1990). It also encompasses the network of interactions and relationships that form around issues of importance to those within the policy community (Atkinson and Coleman, 1992). The more complex the policy community and its network of interactions, as is the case with EA, the more important is meaningful participation and engagement of the various interests (Miller and Demir, 2006).

The importance of meaningful Aboriginal participation in EA has a long history, in both scholarship (e.g. Couch, 2012; O’Faircheallaigh, 2006; Shapcott, 1989; Usher, 1982) and in practice. Arguably, many of the current expectations about what constitutes meaningful Aboriginal participation in EA, and critical and cross-cultural impact assessment in general, were shaped, in part, by the Berger Inquiry of 1974-1977 into the proposed Mackenzie pipeline project, extending from Canada’s western Arctic and down through the Mackenzie Valley of the Northwest Territories (Couch, 2012; Gibson and Hanna, 2009; Bocking, 2007). The Berger Inquiry, which

lasted three years and engaged 35 northern communities, concluded that the proposed pipeline would pose a significant threat to Aboriginal way of life, and recommended a moratorium on pipeline development until such a time that Aboriginal land claims had been settled (Berger, 1977). What was significant about the pipeline inquiry in terms of Aboriginal participation was not the conclusion, but the process by which it was reached (Noble and Udofia, 2015; Anderson et al., 2006) - engaging dozens of Aboriginal communities along the Mackenzie River to hear their concerns, in their own languages and own communities, about the impacts of the pipeline project on northern life.

Currently, Aboriginal participation is recognized in some form in most EA systems with Aboriginal populations. Amongst the stated purposes of the Canadian Environmental Assessment Act, 2012, for example, is to promote communication and cooperation with Aboriginal peoples with respect to EA (sec 1(d)); and to ensure opportunities for meaningful participation (sec 1(e)). In practice, however, notwithstanding increased recognition of Aboriginal rights and culture in many EA laws and regulations, challenges to ensuring meaningful Aboriginal participation persist (Kirchhoff et al., 2013; O’Faircheallaigh, 2007). Lawe et al. (2005: 207), for example, drawing on the Mikisew Cree’s involvement in effects monitoring in the Athabasca oil sands, report that “stakeholder input has generally improved in Canada in the last decade...but true meaningful involvement is difficult, and had not frequently occurred from a community/First Nations perspective.” Booth and Skelton (2011a: 49) report similar concerns regarding the West Moberly First Nations’ experience with First Coal Corporation in British Columbia, arguing that “time, resources and good will have been wasted in an adversarial and confrontational response to a failure in an environmental assessment process.”

In recent years, the desire of governments and industry for a more streamlined EA process, resulting in faster EA approvals (Noble and Hanna, 2015; Bond et al., 2014), has introduced additional challenges to meaningful Aboriginal participation – shortened timelines for participation (Kirchhoff et al., 2013; O’Faircheallaigh, 2007), and attempts to achieve greater efficiencies in consultation and participation processes that have been described by government and industry as onerous and time-consuming (Udofia et al., 2015; Salomons and Hoberg, 2014; Voutier et al., 2008). Commissioned studies such as the ‘Road to improvement: The review of

regulatory systems across the North' (McCrank, 2008), for example, explored opportunities for shortening regulatory timelines for resource development reviews and approval processes; and, nationally, the introduction of the Canadian Environmental Assessment Act, 2012, has meant fewer EAs of projects that may have the potential to affect Aboriginal lands and resources, alongside tighter timelines for consultation (Noble and Hanna, 2015; Kirchhoff et al., 2013).

To achieve even greater efficiencies, if not to resolve their own capacity constraints, governments are increasingly discharging their legal duty to consult with Aboriginal peoples through the EA participation programs of project proponents (Noble and Udofia, 2015; Booth and Skelton, 2011c). The duty to consult refers to the legal obligation of governments, under the Canadian Constitution Act, 1982, to consult with Aboriginal peoples regarding decisions that have the potential to impact on Aboriginal or treaty rights. The result, however, has often been increased *inefficiencies* in EA participation as Aboriginal communities have legally challenged EA processes and decisions due to the lack of meaningful participation (British Columbia Environmental Appeal Board, 2015; Assembly of First Nations, 2011), due in part to the limited timeframe for engagement and the lack of clarity between the legal consultation obligations of governments and the EA participation initiatives of project proponents (Noble and Udofia, 2015).

Both the need for, and the shortfalls of, meaningful Aboriginal participation in EA are well documented (Rozema et al., 2012; Booth and Skelton, 2011a; O'Faircheallaigh, 2007; Lawe et al., 2005; Paci et al., 2002; Wismer, 1996; O'Rielly, 1996; Usher, 1982). But EA scholars, practitioners, regulators, industry, and affected Aboriginal communities are now faced with new challenges – facilitating meaningful Aboriginal participation, so as to maintain the integrity and credibility of the EA process, while at the same time accommodating pressures for a more efficient engagement process under increasingly streamlined EA systems (Udofia et al., 2015). Limited empirical research has focussed on exploring viable avenues to advance meaningful Aboriginal participation alongside a more efficient participatory process. To do so, however, first requires a better understanding of the specific practice-based challenges to either meaningful or efficient participation in EA, or to both.

3.3. Study area and methods

The Clearwater River Dené Nation (CRDN), with a population of 778, is located in the Boreal west of northern Saskatchewan, near the Alberta provincial border, and adjacent to the municipality of La Loche (56°29′N 109 °26′W) (Figure 3.1). The municipality of La Loche has a population of approximately 2,611, of which 95% are of Aboriginal ancestry. There are also 680 registered members of the CRDN who reside in La Loche (Statistics Canada, 2013). Most people in these northern communities speak Dené, often as a first language, though fewer young people have fluency in the language. The local Dené's subsistence hunting, fishing and trapping activities remain an important part of their heritage. Unfortunately, like many northern communities, CRDN and La Loche struggle with such socioeconomic issues as unemployment, poverty, low educational attainment, poor health, increased violence and drug addiction (Kruchak, 2016; Statistics Canada, 2011).

The CRDN and La Loche are located in the resource-rich Athabasca Basin, home to the largest high-grade uranium (U_3O_8) deposits in the world (CNSC, 2015). Uranium production has been ongoing in the region for 40 years, largely under two licensees, Areva Resources and Cameco Corporation, but with seven smaller exploration companies holding properties in the area. The current McArthur River and Cigar Lake mines contribute approximately 75% of uranium production from the region, with concentrations about 100-times the world average grade. Exploration activities continue, with the likelihood of additional mine developments in the future. About 120 kilometers north of La Loche, for example, a large high-grade uranium deposit was recently discovered. The region also has significant oil sands deposits, with exploration commencing in the 1970s along the Clearwater River in CRDN, and at Axe Lake in the La

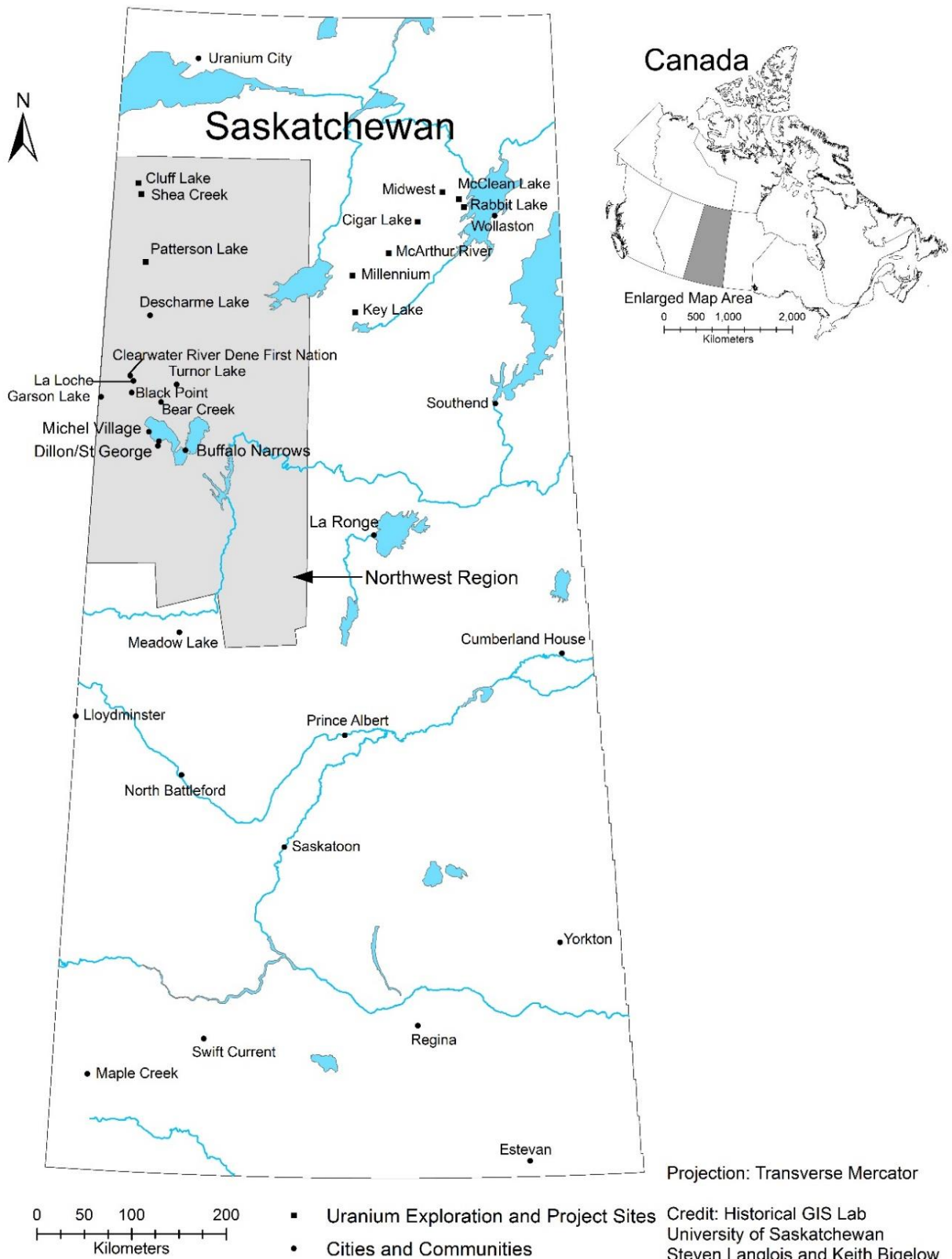


Figure 3.2: Northwest region of Saskatchewan communities and uranium development projects.

Loche area. An exploration permit for Axe Lake was issued by the province in 2006, and an impact benefit agreement signed between the proponent and La Loche Clearwater Development Authority Inc., providing exclusive 20-year access rights to traditional lands near La Loche for the exploration of natural gas, bitumen, and minerals (NationTalk, 2009). In contrast to the oil sands deposits in neighbouring Alberta, Saskatchewan's reserves are deep and difficult to access with current technology.

Uranium mining operations and exploration are subject to EA under federal and provincial processes. There is no requirement under either EA system for Aboriginal participation pre-EA application – before or during the planning stages for resource development. That said, the Government of Saskatchewan's handbook for proponents on voluntary engagement with Aboriginal communities (Ministry of Government Relations, 2013) advises proponents to engage early with those communities most likely affected by their project. Formal engagement is required when an application for development is submitted for EA under either the Canadian federal or Saskatchewan provincial EA acts and regulations.

Proponents engaged in EA are also provided with a guidebook on participation and consultation with First Nation and Métis communities (Environmental Assessment Branch, 2014). The province's First Nation and Métis Consultation Policy Framework (Government of Saskatchewan, 2010) outlines the province's legal duty to consult with potentially affected Aboriginal communities, which is sometimes discharged through the proponent's participation and consultation strategies. The CRDN, a registered Dené First Nation, has preferential consideration for legal consultation regarding resource developments compared to the local municipality of La Loche. A contentious issue in the region is whether government's legal consultation obligations with the CRDN should automatically require consultation with the municipality of La Loche, as the municipality's boundary overlaps the First Nation's territory, with the possibility for adverse impacts on both community's land use rights, and the majority of La Loche's population is of Aboriginal ancestry.

3.3.1 Methods

The research design was case study-based (Yin, 2009) using a grounded theory approach (Strauss and Corbin, 1990). Semi-structured interviews were conducted to explore perspectives on the challenges to meaningful and efficient Aboriginal participation in EA, in order to identify common issue or concepts that, together, help explain enduring concerns about Aboriginal participation in the EA process. Uranium mining has been ongoing in the region for decades. The key actors involved in the EA policy community (see Pross, 1990) in northwest Saskatchewan are the provincial and federal governments, the uranium mining industry and their consultants, environmental non-governmental agencies, and the First Nation and Métis communities and municipalities. An initial list of study participants was identified from impact statements, and then by using a snowball sampling design as the interview process unfolded (Patton, 2002). A total of 36 potential participants were identified and contacted throughout the study process, of which 29 individuals participated. This included 10 representatives from federal and provincial government agencies and ministries; 6 participants from the uranium mining industry; 5 EA consultants/practitioners; 1 environmental NGO member; and 7 representatives from Aboriginal communities including Aboriginal municipal leaders from La Loche, Dené Locals from La Loche and CRDN, and the Meadow Lake Tribal Council. Our objective was to secure participation from all interests in the EA policy community so as to explore the range of perspectives that might exist (Stake, 1995), rather than assume an Aboriginal versus non-Aboriginal perspective. An open house event was also attended in La Loche, providing an opportunity for community members to learn more about the research and to identify their potential interest in participating. Approximately 30 persons, including members of the CRDN and the communities of La Loche, Buffalo Lake and Buffalo Narrows were in attendance.

Interviews were semi-structured, and informed by three broad themes based on our review of existing literature on meaningful Aboriginal participation, including case studies, and more recent literature on streamlining in EA: i) whether current Aboriginal participation processes in EA are considered to be meaningful as well as efficient; ii) whether and how Aboriginal participation and consultation has influenced EA processes in the region; and iii) the constraints to, and requirements for, meaningful participation in EA whilst ensuring a timely and efficient participation process.

Although grounded in a pre-determined set of discussion topics and open ended questions, the semi-structured interview process provided for the flexibility to deviate and explore new questions that emerged during interviews (Sarantakos, 1994), and to then raise and revisit these new issues in subsequent interviews and analysis through an iterative process (Strauss and Corbin, 1990). We did not pre-define for interview participants what is considered meaningful and efficient; rather, such concepts were self-defined based on the views and experiences of the actors involved (see Glaser and Strauss, 1967), and considering the roles they play in the EA policy community - including their interests and power positions, and the extent of their influence (see Hilding-Rydevik and Bjarnadottir, 2007; Hilding-Rydevik, 2006; Kørnø and Thissen, 2000).

Interviews with Aboriginal community representatives and municipal leaders were conducted in person; all other interviews were conducted via telephone. Interviews averaged about an hour in length, were digitally recorded, and transcribed verbatim immediately after each interview (Dunn, 2010; Secor, 2010). Notes were also taken during the interview process to flag new and recurring issues raised by participants. The transcription process facilitated constant comparisons by allowing for analysis to begin immediately after each interview and remain ongoing, thus emerging concepts not originally covered in the discussion could be integrated into subsequent interviews and tested in ongoing analysis (Strauss and Corbin, 1990). Interview results were categorized and thematically coded, with the assistance of NVIVO® v.10 software, through a process of coding up or open coding to group and regroup interview data until common themes emerged (Glaser and Strauss, 1967). After three rounds of coding, ten dominant themes emerged (Bernard and Ryan, 2010).

Ensuring that all interests in the EA policy community are included, specifically the range of Aboriginal interests, can be challenging. Attendance at an open house event in the community helped ensure that those who wanted to participate received an open opportunity to do so. Yet, even within the Aboriginal community there can be conflicting, non-unified voices about EA processes and resource development (Couch, 2012). Common themes were identified based on an iterative process of coding up, and then examined the respective roles of those who shared common perspectives, or dissenting views. This helped to avoid any presuppositions that there would be clear divisions within the EA policy community based simply on Aboriginal versus non-

Aboriginal perspectives. The approach thus relied on empirical data, specifically the perspectives of those involved in EA processes, as the basis for the lessons and observations we proposed for improving current practices. The region has a long history of development, and thus a history of relationship building between the industry and Aboriginal communities (Noble and Birk, 2011; Parsons and Barsi, 2001), which may influence the perspectives of our interviewees regarding what is meaningful and efficient participation, and the extent which the results are applicable to emerging resource development regions or to regions with a history of conflict. A number of direct quotes are presented in the results, but only the participant's general affiliation (e.g., government, industry proponent, practitioner or Aboriginal community member) is identified so as to lend credibility to the results. Additional participant information is reported only for those participants from whom provided consent to do so.

3.4. Results

Results of the interviews are presented below, specifically the ten dominant themes that emerged concerning the challenges to meaningful and efficient Aboriginal participation in EA. Interviewees, including Aboriginal participants, reported many positive attributes of EA participation in northwest Saskatchewan, due in part to the long-standing relationship that has been established between the mining industry and the communities. However, participants also identified several common factors and conditions that present significant practice-based challenges to ensuring meaningful or efficient EA participation, or both. Though the interviews focused on the 'front-end' of the EA process, namely from the project planning to the submission of EIS, many of the issues raised regarding Aboriginal participation in resource development went well beyond these boundaries, bringing in much broader discussions about expectations and influences of participation prior to and during the formal EA process.

3.4.1 Lack of clarity and understanding concerning participation, the legal duty to consult and the responsibilities of industry and government

The lack of clarity of context and understanding concerning the participation of Aboriginal communities in EA and the legal duty to consult, as well as the roles and responsibilities of government versus the mining industry, were discussed by 18 of the 29 participants as affecting

both the meaningfulness and the efficiency of participation. All participants indicated the importance of government, industry and Aboriginal communities having a clear and common understanding of roles and expectations regarding the EA participation initiatives of project proponents, and of the legal consultation obligations of government. A major concern, however, as explained by one EA practitioner, was that the requirements for participation and consultation “quite often have been blended...the context and expectations of each are not clearly understood by the proponent... [and] the understanding of these requirements vary from proponent to proponent.” Similar concerns were raised by Aboriginal participants, reporting that neither meaningful participation nor the legal duty to consult is often achieved, and suggesting that proponent’s participation programs and the government’s obligation to consult Aboriginal peoples need to be clearly separate processes, such that each process and what can be expected are understood by both the communities and the industry. A government official, in contrast, suggested that understanding better how to achieve both processes together would lead to greater efficiencies – a view that did not align with industry, EA practitioners and Aboriginal participants’ perspectives.

Currently, government is responsible for the legal duty to consult but aspects of consultation are often delegated to project proponents. In doing so, the intent is that proponents and their consultants can gather information from communities that capture concerns related to the project, thus ensuring a more efficient engagement process. The majority of industry, practitioner and Aboriginal community-member participants, however, indicated that there is significant ambiguity about the roles and responsibilities of government and industry. Industry proponents said that government, not only industry, must initiate early dialogue with communities, providing clear information on EA processes and consultation requirements. Not doing so “plays into the challenges that the proponent’s face when they try to go out and engage these communities, at least at the early stages.” An EA practitioner similarly identified the gap between government policy and practice, “because the people in the community do not understand the distinction between the proponent and the authorizing ministry” regarding their participation and consultation actions. Aboriginal community participants expressed similar views, with one participant indicating that when setting participation and consultation processes there is a need for governments to “provide clear and consistent information on what is required to inform their

decisions on resource developments...as communities [then] seek to understand how to participate effectively [with project proponents] in ways that make a difference.”

3.4.2 Late timing of Aboriginal participation and relationship building in the project development cycle

All participants identified participation and relationship building as important to the integrity of EA, but the timing of such activities was raised by half of the participants, mostly industry and Aboriginal community members, as a challenge to meaningful and efficient participation. One Aboriginal community participant indicated that Aboriginal communities are at “a significantly disadvantaged position during consultation and participation” process, explaining that government needs to be consulting earlier on issues that will affect traditional rights, even before industry engages with prospective communities. Similar views were expressed by other Aboriginal participants, noting that meaningful engagement requires the duty to consult to “be triggered once the Crown or proponents representing the Crown is contemplating resource development...without waiting for a project proposal to be developed by the industry.”

A municipal official, from La Loche, commented that “even before industry consults with northern communities, the onus is on the government to engage with us early... to discuss how we will like to be engaged, and ensure upfront that industry proponents are adequately informed on issues and concerns that require appropriate attention during participation and consultation processes.”

Doing so would ensure that participation is meaningful, and also ensure a degree of efficiency in that the issues that communities want to be addressed are known by the proponent before they engage with communities, and can be integrated into their EA participation strategies from the outset. This means that information gathered by governments must be used when setting project EA requirements, or terms of reference, for project proponents. Industry participants agreed, indicating that meaningful and efficient participation process, “if properly done and initiated early on before the application process, should provide the wealth of information proponents need to structure the initial project planning and environmental effect minimization design translating to timely EA processes.” Interestingly, government participants said little about challenges regarding the timing of participation, and largely deferred to industry initiatives, identifying the many steps

that industry has already taken, and “could continue to take to build the strongest possible relationships and contribute much more towards effective engagement.”

3.4.3 Small projects and fly-by-night developers

The non-commitment to participation by some developers, especially for small projects or exploration activities, was identified by eight participants, mostly Aboriginal and industry participants, but also an EA practitioner, as a significant challenge to meaningful participation. Participants indicated that communities want to be engaged early in development planning for *any* project with the potential to affect traditional lands and livelihoods – regardless of its size or permanency, or the size of the development company. The failure to engage communities for small projects, or by proponents with no long-term investment in the area, was raised by Aboriginal participants as damaging to their relationship with industry – even with those larger companies with long-term investments. This is not to say that all small project proponents falter on Aboriginal participation; rather, as several industry participants explained, since small-scale exploration projects often don’t require EA, Aboriginal participation seldom happens; there is no formal requirement for participation.

When this concern was raised, one of the government officials emphasized that “the Crown and proponent are still required to engage with relevant communities” even for small projects. However, several Aboriginal community participants, referring to current uranium exploration near La Loche, indicated: “not all exploration industries drilling in our backyard have adequately consulted us on the reserves, but spoken to only our elected leaders.” A community leader from La Loche commented that Aboriginal people in La Loche are not opposed to development, but that *all* potential project proponents need to initiate early discussions with the broader community, not only community leaders, before seeking the issuance of exploration permits, regardless of the scale or duration of development.

3.4.4 Insufficient information available to project proponents about right holders and stakeholders

The Aboriginal Affairs and Engagement Unit of Government Relations is the provincial custodian of information about Aboriginal community right holders and stakeholders. However, more than half of our interviewees, including all industry and EA practitioners, and some government participants, identified challenges to meaningful engagement and process efficiency as stemming from the province's database being either incomplete or not up-to-date. With limited knowledge about what community organizations exist, and the range of Aboriginal interests in the area, an industry participant explained "we have to basically find out all the contacts ourselves – it's an extreme challenge because all the people whom we missed are quite angry that we've not consulted with them." Other industry participants reported that local Aboriginal community contacts, made available by community administrators, was also often not up to date, sometimes even resulting in the issuance of project notification letters to persons no longer living in the community.

Responding to some of these concerns, government participants pointed out the challenges to identifying Aboriginal communities and specific individuals that have interests in any given project. Some attributed this challenge to the lack of understanding about traditional territorial boundaries that exist for most Aboriginal communities in Saskatchewan – but this was not a perspective that was shared by all government participants. The general notion was that the lack of traditional use maps or land use plans in the region affects government's ability to identify, upfront, communities that should be consulted during the EA process, causing inefficiencies and delays for project proponents, and often resulting in less than meaningful participation. This was not an issue that was raised by representatives from Aboriginal communities.

3.4.5 Availability to proponents of documented traditional knowledge

All participants raised the importance of traditional knowledge in EA, including information about traditional uses, culturally significant sites, and important wildlife areas, and its value to informing how industries operate in a community. However, almost half of participants, mostly industry and EA practitioners, but also some government participants, indicated that the limited availability of documented traditional knowledge to proponents and government directly affects both the

meaningfulness and efficiency of participation. A challenge raised by all industry participants, for example, was that some communities have not yet documented their traditional knowledge about the area or established traditional land use plans to inform EA applications. In many cases, obtaining such information requires, for each individual project application, the proponent to seek interaction with those individuals within a community who are willing or available to share knowledge – a highly inefficient process. One project proponent commented that in some instances “... if at all such information exists is not known to most proponents.” This one participant went on to comment that the lack of availability of such information was sometimes deliberate, such that affected Aboriginal communities could later inject conflict and deliberately stall EA process. This was not a view that was shared by other participants; and the lack of availability of traditional knowledge was not an issue that was raised by any of our Aboriginal community participants.

3.4.6 Remoteness of northern communities

The remoteness of northern communities was identified by 21 interviewees – all government, EA practitioners and industry participants – as a factor affecting the efficiency of EA participation. Industry indicated that remoteness works against access, ongoing communication, and maintaining reasonable timeliness for participation. The main challenges concerned the logistics associated with travel to and from remote northern communities, the time and resources required by proponents and/or consultants to do so, and the difficulty in coordinating community participation in absence of an ongoing presence in the community. As a result, explained one EA practitioner, “participation processes up north typically don’t go as planned most of the time due to unforeseen circumstances.” The interviewee went on to suggest that allowing extra time for participation in remote regions could quell frustration, especially for junior exploration companies with relatively limited human and financial resources available to implement participation programs. However, the interviewee further acknowledged that the additional time and resources spent on relationship building may be problematic for proponents that have strict permit holding conditions and timeframes for project licensing. That being said, all participants indicated that development in remote regions requires extra time and resources to accommodate participation processes – particularly when local schedules, and cultural practices and norms need to be respected.

3.4.7 Power dynamics within local leadership, and between northern communities and the Province

Power dynamics within local leadership, and the tension between northern communities and the provincial government, was seen as fueling inefficiencies in Aboriginal participation in EAs for uranium projects in the region. This was an issue that emerged from 17 of our interviews, including Aboriginal participants, industry and EA practitioners, expressing concerns that the relationships between government and Aboriginal community leaders, residents, and municipal administration have become tenser in recent years, characterized by minimal sharing of information about resource developments. An industry participant reported that the ability for most exploration companies to engage with chief and council and Aboriginal elders was becoming increasingly challenging. Public meetings scheduled by industry, for example, have been poorly attended due in part to poor dissemination of information to local residents, mainly influenced by insufficient information about, and access to, community leadership.

Government's mandate is to consult with First Nation and Métis communities when proposed activities could potentially impact their rights to hunt, fish and trap on traditional lands. Government participants indicated that industry is also required to consult with First Nations leaders, based on their consultation mandate, but not with municipal leaders. The reason, explained an EA practitioner, being that "municipalities have boundaries and can only exercise authority/controls over the land within those boundaries and not outside...industry is not required to consult with the mayor and council..." when a project is outside municipal boundaries. Aboriginal peoples living in municipalities do have an opportunity to be involved in consultation processes when conducted for First Nations living on the reserves outside the municipality, when their traditional lands are potentially affected, but the municipal government or administration need not be consulted. This has been a longstanding issue in the region, with municipal leaders from La Loche indicating that the municipality ought to be included in consultation with respect to resource development in and around the area, on par with the adjoining CRDN. Their argument was that given the large number of First Nations members living in the municipality, the municipality is in effect a potentially affected interest and should have equal stake as the CRDN with regard to uranium exploration and development. This has resulted in not only tensions

between municipal leadership and the provincial government, but also between municipal leadership, the CRDN and Aboriginal community members.

3.4.8 Non-flexible response timeframe for EA notifications

Concerns about current EA timeframes for Aboriginal communities to respond to a notification of a proposed mining project was raised by 19 participants, including all Aboriginal participants, as a constraint to meaningful participation. The province's consultation policy framework requires that communities submit any comments or concerns, typically in writing, in response to a notification of a proposed project within 21 to 45 days of issuing the notice, with the anticipated timeline for government's decision 30 to 90 days from the date of notification. Aboriginal participants and municipal leaders expressed concern about the short timelines not allowing adequate time to meaningfully consult with their community members and respond to the project notice.

On the other hand, government and industry identified challenges in obtaining timely responses from Aboriginal communities to inform government's decision. Some government and industry participants acknowledged that in many cases the notification of a proposed project does not reach the local Aboriginal chief or mayor and council in sufficient time to ensure their adequate review. As a result, explained a government official, "the government progresses with making project decisions with or without substantial inputs from the northern communities resulting in communities expressing their lack of faith in the process."

Aboriginal participants often perceive their participation at this early stage of EA as nothing more than a tick box exercise. An NGO participant, and several government participants, suggested that at some point government needs to consider adopting a more sensitive approach to ensure early and ongoing participation, and build in some elements of flexibility in terms of the time frame for response. Most industry participants, however, did not share this viewpoint. Their concern was that introducing flexibilities into the timeframe for a response to a notification of a proposed project would risk introducing greater inefficiencies in participation and uncertainties for proponents in terms of meeting their development plans and licensing timelines.

3.4.9 Limited community capacity and funding for meaningful participation

Community capacity for participation emerged as enduring issue in the region, with concerns raised by 20 participants. Both industry and Aboriginal participants alluded to persistent capacity issues as affecting the ability of proponents and communities to arrive at a common understanding, resulting in either conflict or project delays – usually both. The province allocates financial resources, through the Ministry of First Nation and Métis Relations, to eligible and potentially affected First Nation and Métis communities to facilitate their engagement in EA. A concern raised by industry, practitioner and Aboriginal participants, however, is that these funds are not available to communities prior to the duty to consult and EA application review process, leaving communities with limited ability to engage in the early stages of a development proposal. Such funds are also one-off allocations, raising community concerns about their longer-term capacity and technical expertise for meaningful participation in development after a project is approved. Aboriginal community participants identified the need for earlier, and longer-term, financial, technical and organizational support from both governments and project proponents to address current capacity constraints that impede meaningful participation.

3.4.10 Influence of participation in project EA vs. expectations and bigger-picture needs

Finally, an issue that emerged from 15 of our interviewees concerned the slow, but persistent, shift toward a focus on bigger-picture issues during EA participation and consultation processes. Several examples were reported, by both industry and Aboriginal participants, where the information obtained through participation impacted the decisions made by industry and government concerning project approvals, including delaying or abandoning exploratory drilling in some regions due to concerns about the effects to hunting and fishing activities. An emerging challenge, however, specifically raised by industry participants, was that the issues being raised during EA participation processes are gradually shifting towards bigger-picture debates, such as policy issues about regional development and historic land claims and treaties – issues that cannot be addressed within the scope of project-based EA.

Some EA practitioners indicated that Aboriginal communities have very broad and diverse expectations about what can be accomplished through EA participation, including the ability to

influence provincial policies or development plans for entire regions or resource sectors. All of the Aboriginal community participants we interviewed, for example, indicated the desire, and expectation, for earlier opportunities to influence planning for regional resource development. An Aboriginal participant from the municipality of La Loche specifically highlighted the need for dialogue with government at the strategic level about future mineral development in the region, and the probable impact on municipal and Aboriginal and treaty rights prior to engaging in industry-led project specific participation. Collectively, several interviewees thus suggested the need to more clearly define what should be considered and what, perhaps, shouldn't be within the scope of issues that can be meaningfully addressed through EA participation. The problem, however, is that EA is currently the primary, if not the only, venue to raise such issues. The result is participation that is often seen by Aboriginal communities as less meaningful than it should be, given the limited influence beyond individual project actions.

3.5. Discussion

This study was framed by involving the EA policy community (see Pross, 1990) in northwest Saskatchewan to explore current practice-based challenges to meaningful and efficient Aboriginal participation. Ten themes emerged from the interviews, representing the main challenges to meaningful participation, efficiency in participation processes, or both, as seen by study participants. Most of the issues raised reflect participation process challenges, and concern the design or timing of participation, confusion around roles and responsibilities, and the resources or capacity to engage. Some issues were decisional in nature, and concern the influence that Aboriginal participation has on EA outcomes versus expectations about the types of issues that should be on the table for discussion as part of the EA process. Relational challenges also emerged, particularly concerning information sharing or inclusion that affect relationship building between government, industry and Aboriginal communities.

Many of these challenges have been identified already in the EA literature, including the late timing of engagement (Daman and Bruce, 2012); the remoteness of many Aboriginal communities (Kirchhoff et al., 2013); insufficient information available about project undertakings (Whitelaw et al., 2009); the limited community capacity and funding for meaningful and ongoing participation

(Kwiatkowski et al. 2009; Lajoie and Bouchard, 2006); and insufficient timelines to accommodate Aboriginal engagement (Booth and Skelton, 2011 a, b). Interestingly, however, Noble and Udofia (2015), and the results of this study, indicate that many of the initiatives proposed or already implemented, including the introduction of participant funding programs¹⁴, more responsive timelines for Aboriginal engagement (McCrank, 2008), the use of technologies to increase participation opportunities in remote regions (Fitzpatrick and Sinclair, 2003; CEAA 2012 section 79 (1)), and increased requirements for early engagement (Doelle and Sinclair, 2006) have not resolved these enduring challenges to achieving meaningful and efficient participation in EA (Maclean et al., 2015; Olsen and Hansen, 2014; Booth and Skelton, 2011b).

Further, several additional challenges emerged from our study that have received very little attention in the scholarly literature, and their implications for Aboriginal participation in EA are not sufficiently understood. Arguably, these constitute more fundamental, yet still inherently complex, practice-based challenges that merit additional research and policy attention if solutions are to be found to advance meaningful Aboriginal participation whilst meeting increasing demands for greater efficiencies.

First, for many small or temporary developers, including exploration companies, there is often no formal EA requirement and thus limited opportunity for meaningful Aboriginal participation in planning or decisions about projects with the potential to affect traditional lands and resources. The exemption of smaller companies or operations, often with only short-term commitments in a region and no requirement or resources for meaningful participation, can erode Aboriginal community perceptions of, and relationships with, larger resource companies that do have longer-term investments in the region. Exacerbating the issue was that, even for large developers, small projects in general may circumvent the EA process, and thus opportunities for participation, due to small projects not triggering regulatory EA. At the Canadian federal level, for example, EA applies only to ‘designated projects’, which typically excludes smaller undertakings (Gibson, 2012). In Saskatchewan, most small projects not considered as ‘development’ under the EA Act (see section 2(d); 7.3(1) (b)) do not undergo full EA, thus limiting opportunities for meaningful

¹⁴ At the federal level, for example, participant funding is available under the Canadian Environmental Assessment Act (see CEAA 2012 section 57; 58(1)) and provided also by the National Energy Board (see <https://www.neb-one.gc.ca/>)

Aboriginal engagement. These challenges were not unique to our study area. In British Columbia, for example, small projects, but ones with the potential for significant cumulative effects to Aboriginal lands, can also circumvent the EA process. In 2012, Holmes Hydro Inc. proposed siting 10 small hydro plants on tributaries of the Holmes River, British Columbia, with a total production capacity of 76 megawatts. No comprehensive EA was required; each individual hydro plant was smaller than the 50-megawatt generation capacity threshold needed to trigger regulatory EA (Noble and Udofia, 2015). The exemption of small projects from EA not only reduces the opportunities available for Aboriginal communities to engage in meaningful discussions about development, and how to manage its impacts, it also leads to “an adversarial environment...marked by increased litigation” (Assembly of First Nations, 2011), and risks overall inefficiencies in EA when the process is triggered.

Second, early relationship building is a pre-requisite to meaningful and efficient participation (Tuck et al., 2005), and Aboriginal communities need to be involved at the early stages of development (Kirchoff et al., 2013; Fidler and Hitch, 2007). However, this research suggested that this is a commonly understood principle, but it remains an opportunity that many government agencies and proponents either do not take advantage of or are unable to realize due to other, underlying challenges – including the lack of clarity about their respective responsibilities regarding participation and consultation and, in some cases, Aboriginal communities’ use of “constructive conflict”. Maclean et al. (2015) report that in some instances, depending on the institutional setting, Aboriginal communities introduce constructive conflict (e.g. protests, roadblocks) as a means to address power relations and more directly influence EA processes. In those cases where such constructive conflict has played out in EA, however, such as the Victor diamond mine project in northern Ontario (Whitelaw et al., 2009), it can often be attributed to the lack of early relationship building and Aboriginal communities “being shut out of the EA process” from the outset (Kooses, 2004). Based on experiences with EA and resource developments in British Columbia (Booth and Skelton, 2011c), diamond mining in northern Ontario (Whitelaw et al., 2009), and hydroelectric development in northern Manitoba (Durnik, 2012; Foth 2011), project proponents, not only Aboriginal communities, are adversely affected by the lack of early relationship building. Similar concerns were raised in our study – in this case, however, it was government’s exclusion of the community of La Loche, as a potentially impacted community to

be consulted regarding uranium exploration in the region, which resulted in long delays that slowed the progress of mining exploration projects. The need for relationship building between industry and communities has received much attention in the scholarly literature; however, relationship building between governments and communities has received insufficient attention as a prerequisite to meaningful and efficient participation.

Third, simply demanding, or legislating, that proponents do a better job of communicating information about their projects and engaging all potential interests is of little value for meaningful participation if proponents have limited access to, or knowledge about, local interests and potentially affected Aboriginal organizations. Access to information has been identified in the literature as a persistent problem. The focus however is usually on inaccessible or insufficient information made available to communities about a project or its effects (e.g. Doelle and Sinclair, 2006; Diduck and Sinclair, 2002), versus also the lack of information available to project proponents about the affected communities. Limited knowledge of community organizations, of Aboriginal interests within these communities, and of other Aboriginal communities that have an interest in any given development project, affected the ability of project proponents to develop and implement meaningful participation processes – a challenge exacerbated in, and that may be some of the reasons for, regions where Aboriginal communities introduce constructive conflict to the EA process. A concern emerging from industry and practitioners in northwest Saskatchewan was that the need to gather this information for each project application, due to its limited availability (or incomplete information) from those government departments or agencies who are responsible for managing such information, resulted in increased inefficiencies in participation processes, less meaningful engagement, and tighter timelines for engagement when it does occur. Evidence from our research suggested the need to consider greater coordination and sharing of available information about local Aboriginal communities, including information about their leadership, historical and current land uses and interests, and the history of any prior development on traditional lands – before applications for development are entertained and EA processes triggered. Such an approach could become the collective responsibility of those communities demanding meaningful participation in EA, of governments who have an obligation to consult and who have a mandate to manage such information, and of industries who need to demonstrate socially responsible development practices and achieve more efficient EA processes.

Fourth, traditional knowledge plays an important role in EA participation (Eyporsson and Thuestad, 2015; Usher, 2000), but documented traditional knowledge and traditional land use plans are not always available to project proponents prior to EA application (Noble and Udofia, 2015; Whitelaw et al., 2009; Mulvihill and Baker, 2001). Participants in this study indicated that the lack of traditional use maps or land use plans affected the ability to identify, upfront, communities that should be consulted during EA, including the types of resources and uses that might be affected, thus causing inefficiencies and delays for project proponents and often resulting in less than meaningful participation. Interestingly, some work has been done to document Métis traditional land uses in our study area (HGIS, 2015), but our study participants did not seem to be aware of this information. An enduring concern with traditional use studies, however, was that in those regions where such studies do exist they often are funded in part by the project proponent at the time of the EA or project application. Building this database of knowledge, in a meaningful way, is often well beyond the timelines of any project-specific EA process (Noble and Udofia, 2015). Commencing such studies when an EA application is submitted, or in preparation for regulatory hearings, does little to facilitate meaningful participation; rather, it results in delayed EA due to incomplete or inadequate consideration of traditional knowledge and subsequent regulatory or legal challenges (see Whitelaw et al., 2009; Mackenzie Valley Review Board, 2005). It is acknowledged that significant, underlying challenges remain to be addressed with regard to how traditional knowledge is received and used in EA processes when it is available (Booth and Skelton, 2011b; Ellis, 2005); however, government and industry at large could potentially work towards improving the capacity of Aboriginal communities to undertake traditional use studies earlier in the planning cycle, before project proposals are entertained in a region, as a means to facilitate both meaningful and efficient participation.

Fifth, the lack of understanding of who is responsible for initiating early participation and consultation processes, and what they are to achieve seems to be poorly understood. This may be rooted in the varying understandings of the requirements, contexts and expectations of participation and consultation by industry and government, and governments' delegation of their consultation obligations to industry. Much literature speaks to the need for industry to engage early with potentially affected communities (Booth and Skelton, 2011a; Plate et al., 2009), and

government participants reiterated this point in this study. However, community and industry participants indicated that *governments* should be first on the ground, working with local communities to identify needs, opportunities, and to help set expectations about EA processes before project proponents enter the scene. Arguably, community participants maintained that this responsibility should not be delegated to project proponents. Noble and Udofia (2015), for example, report on a recent British Columbia Environmental Appeals Board decision regarding the Fort Nelson First Nation's challenge to a water extraction license issued to Nexen for hydraulic fracturing. The Board reasoned that Nexen's role in consultation with Fort Nelson was not clearly communicated and, as a result, the province failed to ensure meaningful engagement. This is consistent with the 2012 Ross River Dené Council decision by the Yukon Court of Appeal, which determined that government must consult potentially affected Aboriginal communities before land is opened up for staking and acquisition of mineral title (Cooney, 2013). Proactively initiating early project-related discussions between government and Aboriginal communities at the planning and design stages of both small projects, with potentially minimal impacts, and major projects, with the potential to impact Aboriginal and treaty rights, prior to the government's formal consultation process can potentially translate to more meaningful participation and, subsequently, more efficient participation processes during EA applications (Major Projects Management Office, 2012).

Finally, participatory processes work better when those involved have a clear understanding of their roles and of the limits of the process they are engaged in (Krupta et al., 2015; Sinclair and Diduck, 2009). A common concern raised by industry participants was that local Aboriginal communities often enter EA with an expectation to address broader policy or land claimed-based issues. This was not surprising, since Aboriginal communities often approach EA as part of a larger political processes concerning resource development and desire to place much larger issues on the table than a single project (Booth and Skelton, 2011b). Aboriginal communities understandably "expect that potential impacts to their recognized rights be adequately considered during the project review process, but many of the issues raised are not 'EA issues' per se; rather, they are much larger policy, legal and even constitutionally based issues concerning land title and the rights of Aboriginal peoples" (Noble and Udofia 2015: 15). Participation in EA can be ineffective, characterized by conflict and delay, when attempting to address issues beyond the limited scope

of regulatory EA processes, such as unsettled Aboriginal land claims or incomplete regional planning processes (Mulvihill and Baker, 2001). Considering that these broader policy issues exceed the scope and capabilities of EA, there are greater gains to be had through earlier Aboriginal participation at the strategic levels of planning for regional resource development (Chetkiewicz and Lintner, 2014). There is a significant volume of literature that describes the added value of engagement at the strategic levels of land use planning to more efficient and effective project-based EA (see Noble et al., 2013; Fidler and Noble, 2013; Lajoie and Bouchard, 2006). The problem, however, is that such strategic assessment processes do not currently exist in most jurisdictions across Canada, including northwest Saskatchewan, and the issues raised continue to be the source of much inefficiency and misunderstanding during the EA process.

3.6. Conclusion

Discussions about meaningful Aboriginal participation in EA have gained much traction in the literature, but there is also an emerging literature on the need for greater efficiencies to address the increasing demands faced by project proponents to ensure an inclusive Aboriginal participation process (e.g. Noble et al., 2013; Voutier et al., 2006; Harrison, 2006). To date, much of the focus has been on either demanding more participation in EA, or on streamlining participation processes (Salomons and Hoberg, 2014; Kirchoff et al., 2013; Collyer, 2012; Morgan, 2012), but with less consideration of whether the challenges faced by those engaged in the EA policy community are matters of meaningfulness or efficiency, or both.

This paper set out to identify practice-based challenges to meaningful and efficient Aboriginal participation in EA, focused on the ‘front-end’ of the EA process, from pre-project planning to EIS approval. The analysis was situated in northwest Saskatchewan, a region with a long history of uranium mining exploration development, to better understand some of the underlying practice-based challenges to meaningful and efficient Aboriginal participation in EA from the perspectives of those involved in the process.

Many of the challenges that emerged are multi-dimensional in nature, and concern issues of importance to addressing both meaningful and efficient participation. Although several of the

identified challenges have been reported elsewhere in the scholarly literature, these challenges persist notwithstanding policy and practice efforts to address them. They are also unlikely to be resolved simply by project proponents investing more financial resources in their participation programs. Although such investment may address some of the enduring issues facing Aboriginal communities regarding the capacity to participate, and perhaps even help them do so more efficiently, it may not address many of the issues identified in this research that have also received limited policy and scholarly research attention. These issues, which pose significant obstacles to ensuring meaningful or efficient Aboriginal participation, and often both, include:

- the non-commitment to early and ongoing participation by smaller project proponents, and the EA exemption of exploration projects, resulting in fewer opportunities for Aboriginal communities to participate and increased conflict and delays when EAs are triggered;
- the limited availability of information to project developers on local right holders and Aboriginal interests to better design more meaningful participation initiatives, and to engage more efficiently;
- expectations about the comprehensive integration of traditional knowledge and land use in EA that often do not align with the information that is available to proponents at the time an EA commences, often resulting in such studies being funded in part by industry and conducted during the EA process;
- limited understanding, and sometimes confusion, about who is responsible for initiating early Aboriginal participation and consultation processes, and what is to be achieved through participation versus through legal obligations to consult;
- the lack of early relationship building with potentially affected communities, particularly by governments, due to the unwillingness to do so or other underlying constraints, even though it is recognized as a pre-requisite to a meaningful and efficient EA participation process; and
- unclear understanding about the limits of participation in the EA process, combined with the lack of other viable avenues for Aboriginal communities to raise more strategic issues of concern that affect traditional lands and treaty rights.

In conclusion, Aboriginal participation in EA is often part of a larger, highly politicized process, but at the same time there are many practice-based challenges, and perhaps solutions, that have

not received sufficient attention in the scholarly literature. Resolving many of these challenges requires increasing attention to the needs, expectations, roles and responsibilities of all those engaged in the EA policy community. There is also a need to explore how, and perhaps even whether, meaningful Aboriginal participation in EA can be achieved more efficiently – recognizing the current realities of shortened EA timelines. This is not to suggest that the scholarly or Aboriginal community should accept the increased streamlining of EA as good practice, but there is a need to find meaningful and practical solutions than can work within the efficiency constraints of current practice.

3.7. Acknowledgements

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CHAPTER 4

ADVANCING ABORIGINAL PARTICIPATION IN ENVIRONMENTAL ASSESSMENT: SYSTEMIC REFORMS AND EA ENHANCEMENTS

Preface to Chapter 4

This Chapter drew upon the scholarly literature on Aboriginal participation in EA, empirical results from the northwest Saskatchewan case study, and lessons from a scan of recent project EA applications in Canada to identify enduring concerns facing Aboriginal participation in EA, and propose needful reforms to the current EA system to ensure meaningful and efficient participation in EA. This Chapter also draws on research conducted for a report prepared for the MacDonald Laurier Institute (Noble and Udofia, 2015), “Protectors of the Land: Towards an EA process that Works for Aboriginal Communities and Developers.”

Abstract

Aboriginal participation is institutionalized in most environmental assessment (EA) systems across Canada to promote legitimacy in regulatory decisions and project outcomes, and ensure the protection of traditional land uses and cultural values potentially affected by resource development. In the face of increasing concerns with the limited influence of Aboriginal participation in EA, this paper identifies lessons and opportunities to participation in EA processes. Drawing upon the policy and scholarly literature, international EA practice and findings from the research on Aboriginal participation in EA for mineral resource development, ten institutional and/or process reforms required to improve the meaningfulness and efficiency of Aboriginal participation in EA processes have been identified. Results indicate that these reforms require effecting needful changes in legislation and partnership building, as well as reconsidering what a project-based EA approach to development decision-making can reasonably achieve to ensure meaningful Aboriginal participation in EA. While the principal focus was on the northern Canadian context, the reforms identified in the paper are designed to be sufficiently flexible so as to be broadly applied to other EA regions and jurisdictions.

4.1. Introduction

Environmental assessment (EA) is the preeminent process for assessing and managing the potential impacts of natural resource and industrial development projects. First introduced to Canada in 1972 as a federal policy to screen projects for potential pollution effects, EA is now legislated federally under the *Canadian Environmental Assessment Act, 2012*, and under the laws and regulations of each of the provinces and territories. Across Canada's North, EA is also part of several land claims agreements, including the *James Bay and Northern Quebec Agreement*, the *Nunavut Land Claims Agreement*, and *Inuvialuit Final Agreement*. Aboriginal peoples are one of many interests who play a role in the EA process, but the engagement of Aboriginal peoples whose lands and resources are potentially affected by development is a cornerstone of effective EA (Noble and Udofia, 2015; Booth and Skelton, 2011a) and sustainable resource development (Rozema et al., 2012; O'Faircheallaigh, 2007).

Meaningful Aboriginal participation in EA serves to create accountability and transparency in the EA process (Noble and Birk, 2011), provides project proponents with access to local knowledge which broadens the range of viable solutions for managing project impacts (Stewart and Sinclair, 2007), and helps ensure the legitimacy of decision making regarding natural resource projects and development actions (Pölönen et al., 2011; Howlett, 2010; Jay et al., 2007; O'Faircheallaigh, 2006). Fitzpatrick and Sinclair (2003, p. 162) explain that participation “accentuates the effectiveness” of EA and “ensures that the project meets the needs of the public, ... provides awareness for conflict resolution for stakeholders, ... and provides for a more comprehensive consideration of factors on which decisions are made.”

The engagement of Aboriginal peoples in EA is required in some form in all EA systems across Canada. Included amongst the purposes of the *Canadian Environmental Assessment Act, 2012*, for example is “to promote communication and cooperation with Aboriginal peoples with respect to environmental assessments” (sec 1(d)); and “to ensure that opportunities are provided for meaningful public participation during an environmental assessment” (sec 1(e)). In practice, however, several authors report on the failings of EA to create meaningful opportunities to involve those potentially affected by development proposals (Udofia et al., 2015; Booth and Skelton,

2011c; Lajoie and Bouchard, 2006). EA has been widely criticized both by Aboriginal communities affected by development and by project proponents seeking development approvals. For Aboriginal communities, the concerns are often about meaningful engagement and the limited influence they have on decisions about developments affecting their traditional lands (Booth and Skelton, 2011a, b; Whitelaw et al., 2009).

Voicing concerns about Pacific Northwest's (PNW) recently proposed LNG terminal north of Prince Rupert, British Columbia, for example, the Lax Kw'alaams First Nation note that they are "open to development . . . but not the way the project is currently constituted," going on to explain that their "concerns regarding the environmental impact of PNW project have not been resolved" (Thomas, 2015). The goal of communities is often to achieve, as suggested by Dietz and Stern (2008, p. 192, 231), "full participation by interested and affected parties" (192), and for government and industry "... to err on the side of too much inclusiveness than too little" (231). For industry, however, the concerns are often about time and cost efficiency (Olsen and Hansen, 2014; O'Faircheallaigh, 2009; Voutier et al., 2008; Owens, 2004); a concern reflected by recent EA legislative changes globally, aimed at introducing efficiencies to EA processes to reduce the costs and potential for delays to economic development (Bond et al., 2014).

Ensuring meaningful Aboriginal participation in EA, whilst maintaining a degree of process efficiency to support decisions about resource development, has been a long-standing challenge to EA (Udofia et al., 2015), but there has been very little attention in the scholarly literature on viable solutions (Udofia et al. 2016b, under review). Notwithstanding the increasing volume of research on Aboriginal participation in EA (O'Faircheallaigh, 2007; Jay et al., 2007), mounting legal challenges (e.g. *West Moberly First Nations v. British Columbia* 2009), documented challenges to Aboriginal participation (Damman and Bruce, 2012; Whitelaw et al., 2009), and numerous revisions to federal, territorial and provincial EA processes across Canada (Gibson, 2012; Morgan, 2012), Aboriginal participation in EA often comes up short of expectations (Salomons and Hoberg, 2014; Baker and McLelland, 2003) or is characterized as causing unnecessary burdens on project proponents and delaying EA processes (McCrank, 2008; Voutier et al., 2008). There has been only limited direction as to what reforms or improvements must happen in order to ensure meaningful

Aboriginal engagement in EA, whilst acknowledging the realities of increasing pressures for a more streamlined and faster EA process (Udofia et al. 2016a, in press).

The purpose of this paper was to propose a number of reforms to EA, and enhancements to existing EA processes, that are necessary to advance meaningful Aboriginal participation in EA whilst addressing the need for a timely process for proponents and decision makers. Specifically, this paper suggested how Aboriginal participation in EA (before, during, and after the EA process) needs to change to ensure meaningfulness and efficiency; and what institutional or process reforms are needed to ensure meaningful Aboriginal engagement in the face of limited resources and under the increasing pressures for timely EA decisions.

The following section first presents a brief diagnosis of the current state of Aboriginal participation in EA, as discussed in the EA scholarly literature and reflected by recent EA practice. This is followed by ten recommendations intended to facilitate more meaningful Aboriginal participation in EA. Although the focus is on Aboriginal participation in Canadian EA, the enduring challenges to participation are evident in international EA systems and practices – particularly across the Circumpolar North (Noble and Hanna, 2015). The suggested reforms and improvement strategies are sufficiently flexible so as to be broadly applicable to other EA regions and jurisdictions.

4.2. Enduring challenges to Aboriginal participation in EA: A brief diagnosis

Aboriginal participation is widely recognized as important to effective EA and timely decisions about resource development (Noble and Fidler, 2011; Noble and Birk, 2011; O’Faircheallaigh, 2007; Galbraith et al., 2007; Armitage, 2005). Nonetheless, scholars have reported numerous challenges to Aboriginal participation in EA; and industry proponents continue to express concerns about EA delays, arguing the need for greater efficiencies. Table 4.1 synthesizes several enduring issues facing Aboriginal participation in EA. These may not be the only issues, but they are recurring issues identified in both scholarly literature and EA practice. Many of these challenges affect the design, implementation and the influence of Aboriginal participation in EA for any given project; impact the ability to achieve or determine the desired outcome or appropriate approach to

project development; or affect trust and relationships between government, industry and Aboriginal communities.

For Aboriginal communities, commonly reported issues often relate to such matters as community capacity, the timing and influence of participation, and the need and desire to address more strategic issues concerning resource development beyond the scope of project-specific decisions (Table 4.1). Capacity constraints facing many Aboriginal communities who want to engage in EA are not new. The McCrank Report (2008), for example, indicated that the limited capacity of Aboriginal organizations in the North affects their ability to participate in EA and to document and interpret traditional knowledge to assist in decision-making. Part of the challenge, argues Kwiatkowski et al. (2009), is owed to the “the very size and complexity of the environmental impact assessments carried out (reports of hundreds to thousands of pages are the norm)” (58), coupled with the complexity of the EA regulatory process. The recent report of the Auditor General on the implementation of the *Canadian Environmental Assessment Act, 2012* similarly concludes that many Aboriginal organizations have little capacity “in terms of staff, expertise, and funds to respond within the set timeframes, particularly when asked to respond to several requests at once” (Commissioner of the Environment and Sustainable Development, 2014).

Other enduring challenges to Aboriginal participation concern the late timing of engagement, often due to poor government-industry-community relations or limited opportunities for early participation and relationship building (Kirchoff et al., 2013; Booth and Skelton, 2011c; Durnik, 2008); inadequate consideration of the value of Indigenous knowledge and interests (Stewart and Sinclair, 2007; O’Faircheallaigh, 2007); and non-flexible response timelines placed on aboriginal communities to review development applications (Plate et al., 2009). In several cases, Aboriginal communities express outright dissatisfaction with the EA processes, arguing that potentially adverse impacts to Aboriginal lands and resources are either missed, or inadequately compensated (Booth and Skelton, 2011 b, d; Whitelaw et al., 2009). Part of the challenge being that, increasingly, Aboriginal communities approach participation in EA with the expectations and desire to address land use or policy issues, such as whether development should occur in a particular region, or the types of development deemed most appropriate (Noble and Udofia, 2015; Booth and Skelton, 2011a). Though such concerns are legitimate, the EA process, in its current

form, is not adequately equipped to resolve these larger policy, legal and even constitutionally based issues. In this regard, the Assembly of First Nations notes that “First Nations are forced to resort to litigation because the environmental assessment processes does not adequately consider Aboriginal and treaty rights” (Assembly of First Nations, 2011).

For industry, concerns often involve the lack of clarity about who is responsible for initiating early participation and consultation processes; the variable understandings about the requirements, context and expectations of these processes between the industry and government; and the lack of availability to proponents of documented traditional knowledge and land use plans (Table 4.1). For example, increasingly Aboriginal communities expect that traditional knowledge influence the project designs, impact mitigation options, and regulatory approvals; however, such information is not always readily available to project proponents and building a comprehensive database of traditional knowledge is typically beyond the timelines of most EA processes. When such knowledge is not sufficiently considered by project proponents, the result is often regulatory or legal challenges, cumbersome licensing processes, project delays, and increased costs to industry to secure development approvals (e.g. Booth and Skelton, 2011a; Whitelaw et al., 2009; Voutier et al., 2008; Harrison, 2006).

These enduring challenges to Aboriginal participation in EA, and their implications, are also evident in practice. In 2009, for example, the West Moberly First Nations challenged the province and British Columbia and First Coal Corporation over their approach to the EA process, specifically regarding the extent to which the First Nation’s concerns about the potential impacts of mining on caribou habitat had been taken into consideration during the EA process. The Court’s ruling was in favour of West Moberly, noting that the First Nation’s concerns were not accommodated.¹⁵ Similarly, First Nations’ capacity challenges emerged in Spectra Energy’s EA application for its approximately 850 kilometer Westcoast Connector Gas Transmission Project, to transport LNG from northeastern British Columbia to the northwest coast. The EA reports that 17 of the 24 potentially affected First Nations indicated that they lacked adequate financial, organizational, and technical resources needed to participate effectively, and to remain engaged in

¹⁵ See *West Moberly First Nations v. British Columbia (Chief Inspector of Mines)*, 2010 BCSC 359 (March 19, 2010). Reasons for Judgment

the EA process (Spectra Energy, 2014). More recently, in northeast British Columbia, the provincial Environmental Appeal Board rejected an application by Nexen Inc. for a water extraction license to support hydraulic fracturing operations in the Horn River Basin. The Board's decision was based on Fort Nelson First Nation's challenge to the water license issuance to Nexen by the Province, noting, among other things, that the Crown never clearly communicated Nexen's role in the consultation process to Fort Nelson First Nation (Miller, 2015).

In recent years, there has emerged an increased focus on the streamlining of EA processes, particularly legislative changes aimed largely at introducing efficiencies to reduce the costs and potential for delays to economic developments (Olsen, 2014; Bond et al., 2014). In their analysis of impact assessment systems in the UK, Western Australia, South Africa and Canada, Bond et al. (2014) note that “the changes to all four systems have curtailed public involvement in various ways from fewer numbers of IAs to participate in...., to late-in-process public participation in the interest of expediency in project and/or plan approvals” (52). In Canada, for example, recent reforms to federal EA have streamlined engagement to those who are either “directly affected” or have “relevant information” (sec 5(1) (c) – *Canadian Environmental Assessment Act, 2012*); however, streamlining has also reduced the scope of EA such that many small projects, with the potential to impact Aboriginal lands and traditional uses, are no longer subject to assessment in the interest of making timely decisions about resource development (Bond et al., 2014; Pope et al., 2013; Gibson, 2012; Doelle et al., 2012; Morgan, 2012). The result is fewer opportunities for Aboriginal communities potentially affected by development to meaningfully engage in project evaluation, impact management and decision making (Kirchoff and Tsuji, 2014; Kirchoff et al., 2013). These array of challenges are commonly identified by government, industry and Aboriginal communities involved in, or affected by, EA processes. However, notwithstanding the volumes of research that exist, and numerous EA and policy and practice reforms, these challenges persist. Reforms and much needed improvements to Aboriginal engagement in EA are required to achieve EA that is meaningful to Aboriginal communities and that meets the business needs of development proponents.

Table 4.1: Enduring issues with Aboriginal participation in Environmental Assessment.

Enduring issues	References and evidence from practice
Limited human resource and technical capacity of Aboriginal communities to engage in EA activities, including the data collection and analytical skills needed to undertake reviews of project technical designs, or to lead traditional mapping and land use studies.	O' Faircheallaigh (2007); Mackenzie Valley Environmental Impact Review Board (2008); McCrank (2008) – Review of regulatory systems across the North; Kwiatkowski et al. (2009); Plate et al. (2009); Spectra Energy (2014) – Westcoast Connector Gas Transmission Project
Limited financial resource capacity of Aboriginal communities to become engaged, and to remain engaged in EA, including the financial resources needed to prepare traditional use studies, to engage elders in EA review processes, and to participate in regulatory hearings.	Mackenzie Valley Environmental Impact Review Board (2008); McCrank (2008) – Review of regulatory systems across the North; Kwiatkowski et al. (2009); Kirchoff et al. (2013); Spectra Energy (2014) – Westcoast Connector Gas Transmission Project; Fair Mining Collaborative (2015)
Evidence of participation fatigue amongst Aboriginal communities and staff and the ability to respond to EA applications when faced with multiple applications at once, as proponents and governments attempt to meet their legal consultation obligations.	Fidler and Noble (2013) and Noble et al. (2013) – EA in the Beaufort Sea; Booth and Skelton (2011a); Commissioner of the Environment and Sustainable Development (2014); Noble and Udofia (2015)
The timing of Aboriginal engagement in EA is often late in the development cycle, meaning that potentially adverse impacts to Aboriginal traditional lands and resources are either missed, or inadequately managed or compensated for in the EA process, resulting an adversarial EA environment marked by increased litigation.	Doelle and Sinclair (2006); Whitelaw et al. (2009) – Victor Diamond Mine, Ontario; Assembly of First Nations (2011); Kirchoff et al. (2013); Salomons and Hoberg (2014); Canadian Ethics Business Research Network (2015)
Lack of clarity amongst Aboriginal communities and project proponents regarding who is responsible for Aboriginal engagement, when, and to what extent as governments delegate the procedural aspects of consultation requirements to project proponents and rely on the EA process to fulfill, in part, their legal duty to consult.	Penny (2009); Booth and Skelton (2011b); Kirchoff et al. (2013); BC Environmental Appeals Board (2015) – Nexen Energy water license application; Udofia et al. (2016) – northern Saskatchewan's mining industry
The nature of mitigation or compensation measures that comprise impact and benefit agreements, negotiated privately between proponents and Aboriginal communities, are often unknown to review panels and regulatory decision makers, meaning that decisions are made, and permitting conditions set, in the absence of complete information about a proponent's mitigation or compensation commitments.	McCreary (2005); IGWG (2008) - Voisey's Bay nickel mine in Newfoundland and Labrador and Horizon Oil Sands Project in Alberta; Noble and Fidler (2011) – Nova Gold and Tahltan First Nation; Noble and Hanna (2015)
Legislative and regulatory reforms to streamline EA mean that fewer projects are subject to assessment, resulting in fewer opportunities for Aboriginal communities whose traditional lands and resources are potentially affected by development to engage in project evaluation, impact management and decision making processes.	GSH SAC (2007) – petroleum and natural gas well development in Saskatchewan; McCrank (2008) – Review of regulatory systems across the North; Becklumb and Williams (2012); Kirchoff et al. (2013); Campbell (2015) – Holms Hydro development in British Columbia; Bond et al. (2014)
Limited evidence that the information obtained through Aboriginal participation or other engagement processes in EA actually influences the decisions made by proponents (e.g. project design, mitigation options) and by decision makers (e.g. approval conditions).	West Moberly First Nations v. First Coal Corporation v. British Columbia 2009; Foth (2011) - Wuskwatim hydroelectric generating project, northern Manitoba; Kirchoff et al. (2013); Noble and Gunn (2013) – Keeyask generation project, Manitoba; Thomas (2015) – proposed Pacific Northwest LNG terminal, British Columbia

Expectations that traditional knowledge (e.g., traditional use areas, culturally sensitive sites, trap lines) is integrated in EA when Aboriginal lands and resources are potentially affected, but the often limited availability of this information to proponents for project design and mitigation planning, or the need for each individual proponent to engage in or fund such studies each time a new project is proposed.	Mackenzie Valley Review Board (2005); Stewart and Sinclair (2007); O’Faircheallaigh (2007); McCrank (2008) – Review of regulatory systems across the North; Plate et al. (2009); Whitelaw et al. (2009); Sinclair and Diduck (2009)
Limited or inadequate knowledge, or limited information made available to project proponents, about specific Aboriginal interests and who should be engaged in EA participation processes in resource development regions.	Lajoie and Bouchard (2006); Penny (2009); Booth and Skelton’s (2011a); Booth and Skelton (2011b); Durnik (2012); Foth (2011); Scofield (2012); Kirchoff and Tsuji (2014)
Short timelines for Aboriginal communities to respond to project proposals, notices of intent, or EA reviews, given the remoteness of many Aboriginal communities and current capacity constraints, coupled with the need for greater certainty about project timelines for development proponents and investors.	Voutier et al. (2008); Plate et al. (2009); Lostarnau (2011); Gibson (2012); Doelle et al. (2012); Morgan (2012); Flaherty (2012); Kirchoff et al. (2013); Pope et al. (2013); Bond et al. (2014); Olsen and Hansen (2014)
Concerns raised by Aboriginal communities during EA processes are increasingly geared towards policy issues, regional development, and historic land claims and treaties; issues that cannot be addressed by project proponents and are not within the scope of the project-based EA process – but no other venue exists to address such issues.	Assembly of First Nations (2011); Booth and Skelton (2011b); Kirchoff et al. (2013); Noble et al. (2013); Noble and Gunn (2013) – Keeyask generation project, Manitoba; Chetkiewicz and Lintner (2014) – Ring of Fire, Ontario; Fair Mining Collaborative (2015)

4.3. Systemic reforms and EA enhancements for meaningful Aboriginal participation

Minimizing the role of Aboriginal communities in resource development processes, including EA, leads “not only to an adversarial environment, but one marked by increased litigation” (Assembly of First Nations, 2011). In the following sections, a number of recommended reforms and enhancements to the current EA system are proposed in order to ensure meaningful Aboriginal participation in EA whilst meeting demands for an increasingly efficient regulatory process. These suggestions are a result of a review of EA literature advocating improved participation in EA; a brief scan of recent and ongoing Aboriginal legal challenges regarding EA and resource development initiatives across Canada, drawing also on international case studies; and the result of interviews with representatives from industry (n = 6), regulators and practitioners (n = 15), environmental non-government organizations (n = 1), and Aboriginal community leaders and interests (n = 7) involved in mineral resource development and EA in northern Saskatchewan. Some of these reforms require reconsidering what a project-based EA approach to development decision-making can reasonably achieve. Others require effecting needful changes in legislation and partnership building to ensure Aboriginal communities have the opportunity and the capacity to become meaningfully engaged in EA and decision making processes. These solutions do not correspond to each individual challenge highlighted in Table 4.1; many challenges are interrelated, and so are the solutions. It is not suggested that these are the only reforms necessary to ensure meaningful Aboriginal participation in EA, but they are reasonable expectations for a credible EA process.

4.3.1 Investment in training programs to support Aboriginal education in EA processes

Governments and industry could consider investing resources in the establishment of EA training programs to build educational and technical capacity in Aboriginal communities. Kwiatkowski et al. (2009) report that most Aboriginal communities are not familiar with EA procedures and protocols, nor how to assess and integrate western scientific knowledge alongside local traditional knowledge. The sometimes limited understanding of the EA process, and the lack of technical skills and expertise to participate in EA reviews of complex project applications, affect opportunities for meaningful Aboriginal participation. Aboriginal communities need to be knowledgeable of the nature and intent of the EA process, and have the technical skill sets needed

to become meaningfully engaged in the preparation of traditional use studies and the analysis of project EA applications. Increasingly, industries are discovering the benefits of partnering with governments and training institutions with financial and business expertise to invest in capacity building initiatives in Aboriginal communities. For instance, the Northern Labour Market Committee in Air Ronge, Saskatchewan, was established under the Keewatin Career Development Corporation to identify and assess emerging labour market and economic development issues affecting the people of northern Saskatchewan, and to develop appropriate training and employment activities to address the needs of these Aboriginal communities (Keewatin Career Development Corporation, 2015). Several such programs, including Economic Development Corporations exist across Canada, and could serve as a platform to deliver training on the regulatory EA process to Aboriginal communities.

At the national level, Aboriginal Affairs and Northern Development Canada (AANDC), in conjunction with the National Aboriginal Lands Managers Association and the University of Saskatchewan, has established a professional land management training and certification program focused on law, economics and resource management¹⁶. Costs associated with participating in the training and certification program were initially covered by AANDC, amounting to only \$2.25 million between 2003 and 2013 (Noble and Udofia, 2015); Aboriginal communities are now bearing the majority of the cost for their staff training. There is the potential to expand the scope of this nationally accredited program to include EA, ensuring that Aboriginal land managers have an understanding of the EA regulatory process, develop the technical skills needed to review and comment on project applications and impact statements, and understand when and how to meaningfully engage in the EA process. Such extensive training requires funding support by industry, perhaps from the revenues generated from resource development, supplemented by government sponsorship; thus ensuring not only more informed engagement, but possibly a more time and cost efficient EA process for industry and government.

¹⁶ For information on the Aboriginal land managers training and certification program, see Aboriginal Affairs and Northern Development Canada (<https://www.aadnc-aandc.gc.ca/eng/1399934895782/1399935046259>), the National Aboriginal Land Managers Association (<http://www.nalma.ca/certification>) and the University of Saskatchewan (https://agbio.usask.ca/students/undergraduate/undergraduate_certificate.php)

4.3.2 Enhanced financial capacity for Aboriginal engagement pre and post EA review

Current EA participant funding programs can be enhanced and complemented by longer-term industry investment in Aboriginal engagement post-EA approval, and such investment could potentially be considered as a condition of the regulatory approval of a project application. Currently, the Canadian Environmental Assessment Agency provides funding to potentially-affected Aboriginal communities, and to those who may have information that is of relevance to a project's impacts, to participate in EA (sec 57, CEAA 2012). The National Energy Board offers a similar program, focused primarily on funding registered intervenors to participate in EA hearing processes. The maximum amount of funding is currently \$12,000 for individuals and \$80,000 for eligible groups; it is intended to assist, but not fully compensate for, the costs of participation in EA application reviews and hearings. During the Trans Mountain Pipeline expansion project EA review, for example, a pipeline twinning project from Strathcona County Alberta to Burnaby British Columbia, 95 intervenors requested a total of \$24 million in funding, of which \$3 million was awarded to 71 applicants; nearly 80% of applicants were Aboriginal groups, and the majority of awards were to support travel to attend the project hearing (National Energy Board, 2015).

Intervenor or participant funding programs do not ensure the long-term engagement in EA of Aboriginal communities affected by development, and focus only on the pre-project approval stage. There is no formal support for Aboriginal participation beyond the EA application review process. Pearse (2009) argues that “almost all Aboriginal communities who participate in EA come out the other side in debt”. There are some examples from practice where industry initiatives have financially supported longer-term Aboriginal participation in monitoring and impact management post-EA, including community-based monitoring in northern Saskatchewan's uranium mining sector (Noble and Birk, 2011), and more recently collaborative cumulative effects management involving the Ktunaxa Nation Council in the Elk Valley, British Columbia, funded by Teck Coal (Elk Valley CEMF, 2015). In both cases, industry's investment and commitment was in response to an EA requirement – in northern Saskatchewan it was in response to a joint federal-provincial review requiring that the mining industry engage Aboriginal communities in project management (Noble and Birk, 2011); in the Elk Valley it was part of a condition of approval of Teck Coal's operations (Elk Valley CEMF, 2015). Long-term financial and capacity building commitments for

Aboriginal engagement post project approval ideally need to be considered as a routine part of the EA regulatory approval process. Such longer-term financial commitments, perhaps drawing on the profits from resource leasing and development (Booth and Skelton, 2011b), may be offset by the financial gains realized through more efficient EA approvals and reduced litigation. Initially, this may be financially demanding for small proponents, but over time may emerge as a routine cost of doing business with Aboriginal communities.

4.3.3 Legislative reform and project-based terms of reference to promote early, front-end Aboriginal participation

Ensuring meaningful Aboriginal participation requires a fundamental shift in EA legislation to require more front-end, and culturally appropriate, engagement – at a point when decisions are being made about the intent to develop, and about the nature, rationale for, and intended design of a project. Aboriginal participation is often initiated at the discretion of the proponent, and often *after* a projects’ impact statement is well under-way, or even at the stage of a public hearing process (Sinclair and Diduck, 2009); however, “failure to participate in a process of early engagement with Aboriginal people has led to avoidable project delays and increased costs to proponents” (Major Projects Management Office, 2012). Required is legislation for earlier Aboriginal participation – promoting the co-creation of projects by Aboriginal communities (Udofia et al., 2016a, in press; Keeyask Hydropower Limited Partnership, 2012). The *Yukon Environmental and Socioeconomic Assessment Act*, for example, requires that proponents engage potentially affected Aboriginal communities and that proof of such engagement be submitted to the Yukon Environmental and Socioeconomic Assessment Board as part of the EA application requirements. Earlier participation does not necessarily increase the burden for proponents, and it may help alleviate the conflict that characterizes participation occurring too late in the EA process (Canadian Environmental Assessment Agency, 2012). Syncrude’s expedited regulatory processes for its Mildred Lake extension project, Alberta, for example, was facilitated by earlier consultation and relationship building with Aboriginal communities, resulting in a significant reduction of business risk and cost (Payne and Robb, 2012).

A complementary approach could be to require that the terms of reference developed for an EA are developed in collaboration with potentially affected Aboriginal communities. The terms of

reference set the standards and expectations for an assessment, including the nature and scope of Aboriginal engagement, and typically are drafted by the project proponent and submitted to government for formal public consultation and review. A more collaborative approach to engaging potentially affected Aboriginal communities in developing the terms of reference for a project EA may help ensure both meaningful and efficient EA. In its 2004 application for the Orca sand and gravel mine, located in the Namgis First Nation territory, northwest Vancouver Island, British Columbia, for example, Polaris Minerals engaged the First Nation early in the terms of reference for the assessment. Although this was a voluntary initiative of the proponent, according to LGL Limited and the BC First Nations Environmental Assessment Technical Working Group, the First Nation had a say in the choice of EA consultants, thus ensuring meaningful and a culturally appropriate EA process. Plate et al. (2009) argues that Orca project “set a standard for meaningful participation of a First Nation in an environmental assessment...the First Nation were able to negotiate from a strong and informed perspective, and the completion of the EA process was swift and mutually supported.”

4.3.4 Flexible timelines for EA reviews and establishment of an Aboriginal EA advisory committee

There is need to enact flexible timelines for obtaining a response from Aboriginal communities on project applications and reviews that is commensurate with the scale of the proposed development. Currently, in most jurisdictions, the EA process is criticized for not providing Aboriginal communities with sufficient timelines to respond to a notice of a proposed development, or potential EA, on their traditional lands (Udofia et al. 2016a, in press; Booth and Skelton, 2011b; Plate et al., 2009). In some jurisdictions, however, such as under the *Yukon Environmental and Socioeconomic Assessment Act*, provisions exist for legislated timeline extensions in accordance with the complexity of a proposed project to accommodate meaningful consultation of Aboriginal peoples. Such flexibility may introduce increased uncertainty for project proponents regarding the timelines of their project investments; however, the added benefit would mean reduced risk of a project EA proceeding in absence of having heard from all potentially affected Aboriginal interests – likely leading to increased delays and litigation (Assembly of First Nations, 2011).

Establishing regional or provincial Aboriginal EA advisory committees, comprised of

representatives from Aboriginal communities, could serve to oversee and help ensure the timeliness of community responses to EA applications. Such committees, in collaboration with the Aboriginal leadership of those communities potentially affected by a proposed development, can also serve an advisory role to regulatory authorities, ensuring that up-to-date information on local land-and right-holders is available to facilitate inclusive participation and engagement processes. Though currently not explored in most jurisdictions, this has not been a new idea. In British Columbia, for example, a standing First Nations Environmental Assessment Advisory Committee was recently proposed as a means to provide ongoing advice to the British Columbia Environmental Assessment Office on First Nations issues and concerns regarding EA processes and applications (Plate et al., 2009).

4.3.5 Government, not industry, the first boots on the Ground

There may be an opportunity for government to play a leadership role in providing greater clarity, and setting the expectations about the processes for EA participation – including explaining to communities the indented role of industry in consultation processes. For Aboriginal communities, understanding who is responsible for initiating early participation and consultation processes, and what the processes are meant to achieve is often poorly understood (Udofia et al., 2016a, in press). For instance, in 2015 the British Columbia Environmental Appeal Board issued a precedent-setting decision regarding Fort Nelson First Nation’s appeal of the Province’s decision to issue a water extraction license to Nexen Inc. for the Horn River to support fracking operations. The Board overturned the water license issuance. Part of the Board’s reason for decision was the lack of clarity of Nexen’s role in consulting with the First Nation, versus the role of government, which affected the timing of, and opportunities for, meaningful engagement. The Board indicated that the process “suffered from a lack of understanding and clarity regarding the parties’ needs and expectations” (Miller, 2015).

In any region subject to a potential application for development, the government authorities responsible for managing and regulating the development need be visible, visit local communities early and often to identify needs and opportunities, and help establish expectations about development and EA processes before project proponents enter the scene (Udofia et al., 2016a, in

press; Booth and Skelton, 2011c). The intent is to bring clarity to the respective roles of government and the project proponent regarding EA participation and consultation requirements, and help define the range of issues that can be addressed through the EA process versus those issues that need to be addressed through other earlier or parallel processes.

4.3.6 Need for project or region specific community liaison EA specialist

There is need for industry to assign project specific community liaison specialists to Aboriginal communities located in the right of way of proposed or ongoing resource developments, so as to build faith and trust amongst communities for successful project advancement. Effective engagement lies, in part, in the ability of proponents to provide information to potentially affected communities in a clear, accurate, and culturally appropriate manner (Noble and Birk, 2011). This could be achieved, in part, by a dedicated community liaison specialist, assigned to facilitate industry relations at the community level for each proposed development undertaking to help address community concerns and provide clarity on technical or business issues at the local level. Of course, the assigned staff would need the skills and abilities to work constructively with communities and understand the cultural dynamics involved in working with First Nation and Métis communities – preferably a community member(s) employed by industry and/or government.

Such an individual(s) would not only serve to ensure that industry information is communicated effectively to the local community, but would also serve to ensure that local community information is adequately conveyed to industry – such as information about traditional land uses, or information about local land and right-holders potentially affected by a project’s operations (Udofia et al., 2015; O’Faircheallaigh, 2006; Rogge, 2005; Veiga, 2001). For some project proponents, hiring a community liaison specialist to share timely and accurate information about their operations with local Aboriginal communities is already a well-established part of doing business in northern communities (Cameco Corporation, 2015). Ensuring that all potentially affected Aboriginal communities have equal opportunity to benefit from such an investment, the placement of community-liaison specialists could be considered as a requirement of the terms of reference developed for all EA applications.

4.3.7 Legal requirement to disclose impacts and impact management strategies included in impact benefit agreements negotiated in-advance of the EA process

The content of agreements negotiated between resource industries and communities in advance of the EA process— specifically issues pertaining to impacts and impact management strategies – needs to be made available to review panels and to regulatory decision-makers. Increasingly, negotiating agreements with Aboriginal communities potentially affected by resource development, including plans to mitigate or offset potential environmental and socioeconomic concerns, is becoming a routine part of doing business with Aboriginal communities (CAMA, 2015; Sajid, 2013). Such agreements are typically negotiated in confidence, and in advance of the EA process, in return for a community’s support for a project (O’Faircheallaigh, 2007). Although negotiated agreements provide an opportunity for early Aboriginal engagement in development planning, their confidential nature (Knotsch and Warda, 2009) means that EA review panels and regulatory decision makers, and in some cases community members (Noble and Fidler, 2011), are not aware of the full range of potential project impacts and agreed-upon impact management or compensation strategies when making decisions about a project’s acceptability or when recommending regulatory approval conditions.

Arguably, details concerning a community’s financial gain (e.g. royalty regimes and tax considerations) established under such agreements may very well remain confidential; however, any commitments regarding the mitigation or offsetting of environmental impacts that may have an impact on Aboriginal health or socioeconomic conditions, physical and cultural heritage, or the use of lands for traditional purposes, could be disclosed in the project’s EA report and available to regulatory decision makers.

4.3.8 Need to develop alternate legal platforms outside the Canadian EA laws and policies to address Aboriginal and treaty rights issues

Governments need to explore alternate models, or establish an external mechanism parallel to the EA process, to better address Aboriginal and treaty rights-based issues that emerge from project EA, and that cannot be meaningfully accommodated during an EA. Understandably, Aboriginal communities expect their recognized treaty rights be adequately considered when decisions are

being made about resource development, but many of these issues are not ‘EA issues’ per se; rather, they are much larger legal, and even constitutionally-based issues concerning land title and the rights of Aboriginal peoples. The recognition and affirmation of the existing rights of Aboriginal peoples under section 35 of the *Constitution Act, 1982*, requires that government is legally obliged to consult potentially affected Aboriginal communities. This obligation is usually triggered when government, which is usually provincial government department or agency for most resource development initiatives, has prior knowledge of an established or asserted Aboriginal or treaty right that could be negatively impacted through a proposed project. However, depending on the project’s complexity and severity of impact, the depth and timing of consultation varies significantly from simply providing notice to right-bearing communities on proposed developments, to more extensive deliberations on avenues to accommodate existing Aboriginal and treaty claim issues (Newman, 2014).

Government, once aware of a proposed development, can proactively engage potentially affected Aboriginal communities prior to an EA application to identify key issues and concerns with respect to Aboriginal and treaty rights-based issues. As suggested by the Fair Mining Collaborative, “the development of a general consultation protocol between government and leadership of the potentially affected Aboriginal community” is needed, where such a protocol would “set out objectives, principles, standards, best practices and general guidelines for the conduct of talks between the parties and for project-specific consultation processes” (Fair Mining Collaborative, 2015). This is an important prerequisite for those instances when governments delegate procedural aspects of consultation to industry proponents seeking a particular development, so as to ensure that project proponents are informed about existing Aboriginal rights and title before approaching Aboriginal communities about a potential project. Doing so would help project proponents avoid the risks of unexpected treaty rights issues emerging during the course of the EA process, thus minimizing the likelihood of delays and increased project costs. That said, it is important for Aboriginal communities to ensure that a clear assertion of rights and interests, including disclosure of existing land claims and titles where appropriate in the project area, are communicated to governments and proponents prior to engaging in an EA review process (Plate et al., 2009).

4.3.9 Transferring strategic issues to regional and strategic environmental assessment

Aboriginal communities are demanding greater involvement in policy and planning processes about developments on their traditional lands, but such issues are beyond the scope of project-specific EA and need to be off-ramped to higher-order regional and strategic EA processes. Regulatory EA is not the appropriate forum to address issues and concerns involving policy land use planning, as such issues are beyond the scope of project proponents and project-based decisions (Fidler and Noble, 2013). The timing of EA in the policy and planning cycle means that Aboriginal engagement seldom influences decisions about the most desirable development futures, or whether resource development is even appropriate for the region (Noble et al., 2013; Booth and Skelton, 2011a; Harriman-Gunn and Noble, 2009).

Aboriginal communities and other interest groups are increasingly demanding a more strategic approach to engagement, including in the western Arctic's Beaufort Sea to plan for offshore energy development (Fidler and Noble, 2012), and in Ontario's mineral rich Ring of Fire to set strategic direction for future mining operations (Chetkiewicz and Lintner, 2014). There are some examples of success, including southern Saskatchewan's Great Sand Hills, where Treaty 4 First Nations were engaged in a strategic assessment process to ensure that land use and natural gas development proceeded in a manner that was acceptable based on traditional land use and values (Great Sand Hills Scientific Advisory Committee, 2007); and, more recently, in British Columbia's Elk Valley, where Teck Coal, local municipalities, environmental interests and the Ktunaxa First Nation are working collaboratively to plan for, and manage, the regional cumulative effects of land use and resource development (Elk Valley CEMF, 2015).

Regional and strategic assessment frameworks provide an opportunity for Aboriginal communities to more effectively address the cumulative and synergistic impacts of developments, including those that do not trigger regulatory EA; to incorporate discussions about a community's long term vision for land use, development and conservation; and to reduce the need for multiple consultation process in regions subject to multiple project proposals in the same industrial sector (e.g. multiple mining operations, offshore energy development). The success of Aboriginal engagement in regional and strategic assessment, however, requires that governments be open to discussions

about development when regional policy and resource plans, as opposed to individual projects, are being mapped out. Although guidance does exist for regional and strategic assessment (e.g. CCME, 2009), supporting policy and legal frameworks need to be developed to ensure that options exist to off-ramp strategic issues from project EA, and then to ensure that the results of regional and strategic assessment processes actually influence regulatory decisions (see Gibson et al., 2010).

4.3.10 Follow-up and evaluation of Aboriginal participation strategies

Finally, governments, in collaboration with industry and Aboriginal communities, need to follow-up on Aboriginal participation strategies and commitments, and evaluate the role and contributions of engagement processes to ensure their effectiveness in current and future EAs. Follow-up is essential to good EA, and to improving the quality and relevance of EA (Hunsberger et al., 2005; O’Faircheallaigh and Corbett, 2005), but there is little evidence of follow-up programs in EA to ensure that participation strategies for the engagement of Aboriginal peoples are implemented and contribute to meaningful outcomes. In Canada, both federal and provincial governments have established various frameworks and indicators focused on assessing the activities of the Crown during consultation processes (Government of Saskatchewan, 2015; Canadian Nuclear Safety Commission, 2014; Indigenous and Northern Affairs Canada, 2011), and various provisions exist under federal and provincial EA systems for post-EA follow-up and monitoring activities (see Hanna, 2015), but there is no requirement for following-up on participation strategies carried out during the EA process to ensure their effectiveness and to learn for future practice.

Internationally, progress has been made towards the development of frameworks to evaluate community engagement (e.g. Johnson, 2004; Marsh, 2001; Beirele, 1998). A commitment to meaningful Aboriginal engagement in EA requires that proponents’ follow-up on their participation strategies to evaluate their effectiveness, and that governments’ audit proponent’s commitments to participation. Similar to follow-up requirements for biophysical impacts and mitigation commitments, EA legislation across Canada, or project specific terms of reference, could include follow-up to provisions for Aboriginal participation – including provisions for audits of the nature and contributions of Aboriginal participation to project impact mitigation strategies.

To achieve this may require that government agencies responsible for managing resource developments take a number of steps, including:

- 1) Clarifying within project terms of reference what participation in EA is intended to achieve;
- 2) Requiring industry to develop specific indicators of success for Aboriginal participation in regulatory and project planning based on internal engagement principles;
- 3) Establishing a working group of officials from more than one government agency directly involved with EA to develop consistent set of goals (audit criteria) and performance measures to ensure effectiveness in participation processes across sectors;
- 4) Designating a lead department or agency to coordinate EA participation follow-up review for each project using a systemic guideline and protocol;
- 5) Creating awareness through workshops designed to encourage following up on Aboriginal participation in EA processes.

Relatedly, government and industry might consider being committed to an annual regulatory-based monitoring and follow-up post-EA engagement to assess whether Aboriginal participation efforts have met established objectives commensurate with the project type, scope and the degree of potential impacts. Industry could seek avenues to encourage Aboriginal involvement in community-based follow-up and review of participation in EA, thus providing the opportunity for collaborative development of performance criteria specific to their needs against which the adequacy of participation in EA can also be measured during the annual regulatory-based monitoring and follow-up. The Natural Resources Canada (NRCan), for example, mandates federal authorities to report annually to Parliament on the follow-up actions taken to fulfil the environmental effects evaluation process under CEAA 2012 for non-designated projects on federal lands or outside Canada (Natural Resource Canada, 2015). Finally, more opportunities could be created for stakeholders in all domains of EA and participation to exchange ideas, challenge mindsets, share experiential lessons and best practices in order to improve future participation programs (Kemp, 2009). Greater focus on exploring these steps alongside other EA enhancements and reforms should greatly assist efforts geared towards ensuring the meaningfulness of Aboriginal participation in EA.

4.4 Conclusion

Aboriginal participation is essential to informed EA decision-making and for sustainable resource development. Meaningful engagement of Aboriginal peoples implies, amongst other things, that communities are enlisted into the project design, planning, assessment and decision process, and that they also contribute to the exchange of information, interests, and values. Aboriginal peoples often express dissatisfaction with the current nature and level of engagement in EA processes, and with their ability to influence regional project planning and meaningfully contribute to EA decision outcomes. Project proponents are dissatisfied with the increasingly adversarial and often cumbersome EA process, with increasing demands for more participation. Addressing these concerns requires rethinking the nature and purpose of Aboriginal participation in EA, and what can be meaningfully achieved through such engagement.

Based on observation from practice, insights from a cross section of stakeholders involved in EA for resource development in northwest Saskatchewan, and drawing on international scholarly and policy literature, this paper identified several enduring challenges to the nature and scope of Aboriginal engagement in EA and the much-needed EA reforms and enhancements to ensure meaningful participation and EA process efficiency. Some of these reforms reflect much needed improvements inside the EA process itself; others concern the relationship between projects and processes external to the EA system. Improving Aboriginal participation is unlikely to adversely affect the efficiency of EA; however, poor Aboriginal participation or the lack of engagement will continue to result avoidable conflicts between proponents and Aboriginal communities, increase regulatory decision timelines, and introduce unnecessary financial costs to project proponents. In conclusion, the scholarly community in collaboration with Aboriginal communities, project proponents, and regulators needs to explore the reforms suggested by this research, identifying windows of opportunity for EA reform and process improvement, to help ensure more meaningful Aboriginal participation in EA without compromising timely decisions for development proponents.

CHAPTER 5

SUMMARY OF KEY RESEARCH FINDINGS

5.1 Introduction

Environmental assessment (EA) is intended to identify and evaluate the potential environmental and social impacts of proposed development projects, to propose strategies for managing those impacts, and to ensure that development proceeds in a manner that is in the public interest (Wood, 2008). The participation of Aboriginal peoples whose lands and resources are potentially affected by development has long been recognized as key to promoting legitimacy in regulatory decisions and project outcomes during EA processes (Prno and Slocombe, 2012; Clark et al., 2006; Palerm, 2000; Webler et al., 1995). Notwithstanding, EA is under increasing pressure from governments and project proponents seeking development approvals to be a more timely and efficient process (Noble and Hanna, 2015; Bond et al., 2014; Gibson, 2012; McCrank, 2008).

Similarly, Aboriginal communities affected by development are pressing for more meaningful participation in EAs to inform decisions and deliver benefits, whilst ensuring environmental protection and the preservation of traditional land uses and cultural values (Booth and Skelton, 2011b; Lajoie and Bouchard, 2006; Lawe et al., 2005; Wilson, 2002). In practice, ensuring meaningful Aboriginal participation in EA, whilst ensuring a timeline and efficient development planning and decision making process, remains a significant challenge (Noble and Hanna, 2015; Kirchoff et al., 2013; Scofield, 2012; Voutier et al., 2008).

The purpose of this thesis was to understand the prospects and challenges to achieving EA processes that are both meaningful in providing the opportunity for communities to shape the outcomes of proposed resource development initiatives, yet efficient in accommodating the needs of proponents to obtain a decision in timely and financially viable manner. This was realized based on addressing three overarching questions:

- 1. How has the scope of scholarly research on Aboriginal participation in EA evolved over time, and what are the potential implications for meaningful and efficient EA and participatory processes?*

2. *What is the perception of EA regulators, industry and communities concerning the meaningfulness and efficiency of Aboriginal participation and consultation during EA decision making for resource developments?*
3. *What are the lessons and opportunities to improve Aboriginal participation from past and current EA processes for resource development, and how might these help advance future EA practice?*

The focus of this research was on the meaningfulness and efficiency of Aboriginal participation during the application phase of EA - from the time the assessment process is triggered until the EIS is submitted. This approach allowed for a thorough review of the challenges with, and opportunities for improvement in Aboriginal participation in EA; it was also sufficiently flexible to accommodate emerging concepts regarding influences and expectations about what should happen with respect to participation prior to the commencement of EA. Based on an analysis of the EA scholarly literature; an examination of industry, government and Aboriginal community perceptions and EA experiences; and drawing on recent EA practice, this research provided for an improved understanding of how to advance the meaningfulness of Aboriginal participation in EA, ensure Aboriginal rights are respected whilst helping ensure timely and efficient EA processes. The suggested options for EA reforms and enhancements identified in this thesis will hopefully contribute to the new federal government's commitment to reform EA, and to strengthen the involvement of Aboriginal peoples in EA processes. In the sections that follow the key research findings are presented and discussed, including the implications for practice and opportunities for future research to further advance Aboriginal participation in EA and decision-making processes.

5.2 Aboriginal participation in Canadian environmental assessment: Research gaps and directions

Although the importance of meaningful Aboriginal participation to effective EA has been a major focus for EA scholars and practitioners (Noble and Hanna, 2015), there has been limited direction on how to ensure meaningful participation in an increasingly streamlined EA regulatory environment. The first manuscript in this thesis set out to examine the nature and scope of research attention given to the evolving context of Aboriginal participation in EA peer-reviewed journal literature from 1970 to 2015. The review focussed on only EA literature and peer-

reviewed scholarship so as to explicitly examine the EA scholarly community's approach towards addressing the enduring challenges with Aboriginal participation in EA, and to identify what the EA community has identified as the strategies and concepts required to strengthen and improve Aboriginal participation in EA. A total of 112 articles were identified using the Scopus database, and analyzed and grouped into one of three broad thematic research areas that emerged from a coding and review process, namely: i) research focused on the challenges to Aboriginal participation; ii) research addressing the benefits of meaningful Aboriginal participation; and iii) research proposing or evaluating strategies, frameworks or methods for improved Aboriginal participation. Each theme consisted of several related sub-topics, each addressing Aboriginal participation.

A significant body of scholarly literature has focused on enduring concerns about the nature, timing and quality of Aboriginal participation in EA (Booth and Skelton, 2011a; Whitelaw et al., 2009; Lajoie and Bouchard, 2006). Other authors have focused on the notable benefits of Aboriginal participation in EA, including community empowerment and enhanced EA and project legitimacy, among others (Fidler, 2010; O'Faircheallaigh, 2006; Meschtybe et al., 2005). A persistent message in the scholarly literature was the need for improvements to EA participation processes and provisions (Hanna et al., 2014; King and Cruickshank, 2012; Noble and Birk, 2011; O'Faircheallaigh, 2007; Galbraith et al., 2007). In recent years, researchers have framed this need around pressures by government and industry to streamline project review processes to ensure more timely regulatory approvals (Damman and Bruce, 2012; Voutier et al., 2008), coupled with the recognized need for Aboriginal communities to play a more meaningful role in EA and decision making (Booth and Skelton, 2011a).

This manuscript concluded that further empirical-based research is needed on at least three key fronts. Specifically, research that: examines the impacts of streamlining on the meaningfulness of participation, and the impacts of meaningful participation on ensuring a timely and efficient EA; identifies reoccurring issues raised during EA processes so as to explore and better define expectations regarding the scope of issues that can or should be addressed *inside* the EA process versus those that are best addressed external to EA; and focuses on developing and testing alternative mechanisms for participation at the regional and strategic levels, and identifying the

means by which participation through such processes can meaningfully influence regulatory-based development decisions.

5.3 Enduring challenges to Aboriginal participation: Case analysis from northern Saskatchewan

There is significant scholarly literature on the need for, and importance of participation in EA (Lajoie and Bouchard, 2006). However, there has been limited empirical research focused on examining the challenges to, and opportunities for *both* more meaningful *and* more efficient participation. As such, viable avenues to advance the meaningful engagement of Aboriginal peoples in EA alongside a more efficient EA processes for proponents have seldom been explored. Improving Aboriginal participation in EA requires, first, an understanding of the nature and current challenges to both meaningfulness and efficiency. The second manuscript in this thesis set out to identify the underlying practice-based challenges to meaningful and efficient Aboriginal participation in EA during the application phase of EA - from the time the assessment process is triggered until the EIS is submitted, and, in doing so, identify specific practice-based areas in need of research and policy attention if both meaningful and efficient Aboriginal participation in EA is to be realized, or even considered possible.

This objective was achieved by evaluating the experiences of various interests from industry, government department and agencies, environmental non-governmental organizations and affected Aboriginal communities involved in EA for mineral resource development in northwest Saskatchewan, Canada. A cross-section of interview participants were identified purposively from the EA policy community in northwest Saskatchewan, based on their knowledge of, and involvement in participation and EA processes. The study adopted the policy community as a conceptual framework to help identify and understand the various roles and stakes involved in the EA process, and the relationships between actors who seek to shape, or attempt to shape, the EA process (Pross, 1990). A grounded theory approach (Strauss and Corbin, 1990) was used to guide the study, including analysis of the empirical data emerging from semi-structured interviews. Though the interviews focused on the ‘front-end’ of the EA process, many of the issues emerging from the interviews regarding Aboriginal participation in resource development pushed well beyond these boundaries, identifying much broader issues and expectations for participation prior

to the commencement of formal EA process. The results suggest ten dominant challenges to meaningful or efficient Aboriginal participation in EA, or both as identified by study participants – spanning a combination of what happens before EA with regard to participation, and expectations set by pre-EA processes including land titles and rights-based processes. All of the issues raised often concern challenges that influence the design, implementation and outcome of participation in EA processes; challenges that impact the influence that Aboriginal participation has on EA outcomes and decision making; and challenges that affect trust and relationships between government, industry and Aboriginal communities.

First, smaller developers operating small projects with fewer human and financial resources to coordinate participation, or those with only short-term commitments to the region, posed significant relational challenges between industry and communities in the region. The reason being that smaller undertakings are rarely subject to assessment under the federal and provincial EA (Kirchhoff et al., 2013), meaning limited opportunity for Aboriginal participation in development decision-making (Kirchhoff and Tsuji, 2014). Second, the lack of sufficient information on local right holders and stakeholders made available to resource industries in northwest Saskatchewan affected both the meaningfulness and efficiency of participation processes. Limited knowledge and access to community organizations and Aboriginal groups within and external to the communities of interest affected industry's ability to implement meaningful participation processes, and influences the timelines of regulatory decisions for proposed projects.

Third, lack of readily available documented traditional knowledge and traditional land use plans to project proponents often resulted in delayed EA processes. Aboriginal communities often require sufficient funding to adequately collect traditional knowledge relevant to proposed developments, but the timeframe required to commence and complete these studies for meaningful consideration in EA is often beyond the timeframe for project assessment, resulting in delays or legal challenges from unsatisfied community participants. This was consistent with the experiences of the Fort Albany First Nation (FAFN) during Aboriginal engagement for Victor Diamond mine project in northern Ontario, where DeBeers Inc. decision to exclude FAFN and other coastal communities from traditional knowledge and socioeconomic studies was due to the perceived limited potential of the project to affect those communities (Whitelaw et al., 2009).

Fourth, the varying understandings of the context and expectations of participation and consultation by the industry and government, as well as the understanding the responsibility of the industry and government by Aboriginal communities, posed significant challenges to both meaningful and efficient participation. Aboriginal communities expect governments to engage early with local communities about potential resource development in their traditional territories, and to help clarify the role of industries in fulfilling the legal duty to consult mandate prior to formal engagement by industry. The lack of clarity of the respective roles and responsibilities of government and industry, however, has resulted in inefficient participation strategies – and in some instances legal challenges and project rejection (Miller, 2015).

Fifth, the late timing of Aboriginal participation and relationship building between the industry, government and Aboriginal communities in the project development cycle directly influenced the progress of exploration projects. Failure on the part of industry or government to initiate early relationships with Aboriginal communities were due to several factors – including insufficient information about local stakeholders and right holders, dysfunctional relationships with First Nation and municipal leaders, and the lack of organized representation of Aboriginal organizations within communities to support meaningful engagement. Similar challenges with cooperation between Aboriginal communities, government and industry have been reported elsewhere in the scholarly literature, including Manitoba (Foth, 2011) and British Columbia (Booth and Skelton, 2011a).

Sixth, the remoteness of northern communities often worked against the ability of governments and industry to maintain significant relationships with Aboriginal communities, and reasonable timeliness in participation and EA processes (see Tuck et al., 2005). The additional time and resources required to ensure early initiation of Aboriginal participation in ways that respects local values and cultural practices in remote region are important to avoiding delayed project assessment and regulatory decision making. Seventh, power dynamics that exist within local leadership, the tension between northern communities and the provincial government, as well as limited access of project proponents to community leadership, posed challenges to both meaningfulness and efficiency of Aboriginal participation. The relationship between Aboriginal communities and the

provincial government has been rather tense, particularly with regards to the government's differing position on the consultation mandate for resource development affecting municipalities and First Nation communities. The trickle-down effect, as observed by industry, has resulted in difficulty in engaging with the chief and council and local elders.

Eighth, non-flexible timeframes for Aboriginal communities to respond to notifications about a proposed project affected the meaningfulness of participation and efficient regulatory decision-making. The regulatory authorities responsible for resource development set specific timeframes for response to a project notification, which is increasingly challenged by several northern communities as insufficient time to ensure adequate community review (e.g. Booth and Skelton, 2011b; Plate et al., 2009). To a great extent, the challenge for Aboriginal communities has been the lack of financial, technical and human resource capacity to ensure timely responses within the anticipated timeframe, resulting in government's decision to either approve, reject or request modifications to proposed projects, with or without substantial inputs from northern communities.

Ninth, and closely related, limited community capacity and funding for participation remains a persistent challenge to meaningful and efficient participation in EA. In many cases, the lack of capacity and resources at the community level to engage early at the design and planning stages of development affect the ability of all parties involved in EA to arrive at outcomes that are meaningful and acceptable to local communities. The result can be conflict, risking significant delays in project approval. This was the case with the De Beers Canada Inc. proposed mine site and the Attawapiskat First Nation, whereby the lack of early engagement, coupled with capacity constraints and the community concerns over lack of substantial benefits from the mine, resulted in roadblocks, legal challenges and significant process delays (Whitelaw et al., 2009).

Finally, the focus of issues raised by Aboriginal communities during project-EA participation has been gradually gravitating towards certain policy-type issues about regional scale development and historic land claims and treaties - issues that cannot be addressed within the scope of the project-based EA process. This has become a growing concern in recent practice, suggesting the need to explore alternative models of participation, focused on early engagement through regional and strategic EA processes, when alternative options for development are still viable and broader

policy issues on land claims and title rights are open for debate. Similar concerns have been reported by Booth and Skelton (2011a, b) during their investigation of the engagement of West Moberly First Nations, Halfway River First Nation, Saulteau First Nations and Treaty 8 Tribal Association in the British Columbia and Canadian EA processes.

Overall, the manuscript captured a comprehensive suite of, and the interrelationships between, the suite of practice-based challenges that pose significant obstacles to Aboriginal participation in EA. Results from the northwest Saskatchewan case demonstrated that many of the challenges are multi-dimensional in nature, and concern issues of importance to addressing both meaningful and efficient participation. Although many of the issues reported have been identified elsewhere in other scholarly studies, other issues emerging from the research have received very little policy and research attention. Developing practical solutions to advance Aboriginal participation in EA requires increasing attention to the needs, expectations, roles and responsibilities of key actors in the EA policy community, and exploring how, and perhaps even whether, meaningful Aboriginal participation in EA can be achieved more efficiently – recognizing the current realities of shortened EA timelines.

5.4 Advancing Aboriginal participation for natural resource development: Systemic reforms and EA enhancements

The objective of the third manuscript was to propose a number of reforms to EA, and enhancements to existing EA processes, that are necessary to advance meaningful Aboriginal participation in EA whilst addressing the need for a timely process for proponents and decision makers. Specifically, this paper suggested how Aboriginal participation in EA (before, during, and after the EA process) could be improved; and what institutional or process reforms may help ensure meaningful Aboriginal engagement under the time constraints of existing EA processes. Drawing on the lessons that emerged from the northwest Saskatchewan case, the outcomes of several EA cases and legal challenges from practice, as well as recommendations from policy and scholarly literature, the chapter first presented a brief diagnosis of the current state and several longstanding challenges to Aboriginal participation in EA. Despite much scholarly research attention, policy development, and suggested EA revisions, these challenges still persist and pose ongoing barriers to meaningful Aboriginal participation in EA.

Ten reforms or enhancements to current EA processes were recommended. Some of these reforms may require reconsidering what EA can reasonably achieve. Others may require effecting changes in legislation and partnership building to ensure that those affected by development have the opportunity and the capacity to become meaningfully engaged in EA and decision making processes. The ten suggested reforms are as follows:

- i) Resource industries and governments could consider investing resources in the establishment of EA training programs to build educational and technical capacity in Aboriginal communities.
- ii) Current participant funding programs for Aboriginal communities to engage in EA can be enhanced and complemented by longer-term industry investment in Aboriginal engagement post-project approval.
- iii) A fundamental shift in EA legislation is needed to require more front-end, and culturally appropriate, engagement on behalf of the project proponent – at a point when decisions are being made about the intent to develop, and about the nature, rationale for, and intended design of a project
- iv) Enacting flexible timelines for obtaining a response from Aboriginal communities on project applications and reviews, commensurate with the scale of the proposed development.
- v) Governments could explore the option of playing a leading role to provide greater clarity, and set the expectations about the processes for participation – including explaining to communities the intended role of industry in consultation processes.
- vi) Industry may consider assigning project specific community liaison specialists to northern communities located in the right of way of proposed or ongoing resource developments to build faith and trust amongst communities for successful EA and project advancement.
- vii) The content of agreements negotiated between resource industries and communities in advance of the EA process– specifically issues pertaining to impacts and impact

management strategies – could to be made available to review panels, and to decision-makers.

- viii) Governments could explore alternate models, or establish an external mechanism parallel to the EA process, to better address issues, mainly Aboriginal and treaty rights-based issues, emerging from project EA applications that need to be addressed, but that cannot be meaningfully accommodated during an EA process.
- ix) Strategic issues about policy and land use planning, which are beyond the scope of project-specific EA, could be transferred to higher-order regional and strategic EA processes to ensure greater involvement of Aboriginal communities in broader policy debate during EA processes.
- x) Governments, in collaboration with resource industry could do a better job of following-up on Aboriginal participation strategies and commitments, and evaluate the role and contributions of engagement processes to ensure their effectiveness.

Overall, this manuscript builds upon a foundation already in place in the scholarly and policy literature to propose models to guide and advance meaningful Aboriginal participation in EA for resource developments. These reforms reinforce that several lapses are evident in the current EA regulatory regime, despite numerous policy and scholarly efforts to address them. Some of these reforms reflect much needed improvements inside the EA process itself; others concern the relationship between projects and processes external to the EA system. Achieving meaningful Aboriginal participation is unlikely to threaten the efficiency of EA; however, poor Aboriginal participation or the lack of engagement altogether will likely result in conflict and regulatory delays that add unnecessary costs to project proponents. The EA reforms and enhancement strategies suggested in this chapter transcend specific context and are likely to be broadly applicable to other EA regions and jurisdictions.

5.5 Lessons from practice: Advancing Aboriginal participation in environmental assessment for resource development in northwest Saskatchewan

This research examined some of the enduring concerns regarding Aboriginal participation in EA, and suggested needful reforms to advance meaningful and efficient participation. Reflecting on these enduring challenges and recommended reforms, the following section addresses three overarching issues that are of particular relevance to Aboriginal participation for uranium mining in northwest Saskatchewan, Canada, and arguably the three most significant opportunities for ensuring meaningful Aboriginal participation in EA practice more broadly.

5.5.1 Importance of early, front-end Aboriginal participation

First, one of the major concerns echoed by community participants in northwest Saskatchewan was the timing of Aboriginal participation in EA, which is typically late in the development cycle, with the possibility for potential adverse impacts to Aboriginal lands and resources to be either missed, or inadequately compensated during EA review processes. Similar concerns have been raised by other researchers in other regions across Canada (see also Kirchoff et al., 2013; Booth and Skelton, 2011a, c; Foth, 2011; Durnik, 2008). In any region subject to a potential application for development, the government departments or agencies responsible for managing and regulating developments could consider being the first on the ground, working with local communities to identify needs, opportunities, and to help set expectations about development and EA processes way ahead of project proponents (Cooney, 2013). Only then can the early engagement of these communities by project proponents, to disseminate project information, identify community right holders and stakeholders, and gain access to traditional land use plans, translate to effective participation and timely EA process (Booth and Skelton, 2011c).

For relatively remote Aboriginal communities, such as in northwest Saskatchewan, a potential solution would be to give greater consideration to the geography of these communities, thus allowing more time to establish trust and relationships early in the EA process. This early relationship building cannot be a voluntary action, however; as important as gaining a social license to operate might be to some industry players (Dare et al., 2014; Prno and Slocombe, 2012), legislation is needed to ensure participation in project planning prior to the submission of an

application for staking, permitting, exploration or EA – regardless of the nature or size of the proposed undertaking. Aboriginal communities would then have a much longer lead-in time to identify and assess their needs, determine their interests in engagement, and to identify the potential impacts of the proposal as foundations to ensuring meaningful participation. The findings of this research in northwest Saskatchewan are consistent with Cuppen et al. (2012), and Doelle and Sinclair (2006), who suggest that early initiation of participation could help introduce efficiencies into the EA process, and subsequently inform the consultation process carried out by government. Experience has shown that failure to establish early relationships in the planning and design phases of a proposed project can lead to increased costs to proponents and adversely affect the timelines of participation and EA processes (Major Projects Management Office, 2012).

Given the potential for future growth of the uranium mining sector in northwest Saskatchewan, and the possibility for increasing requests for Aboriginal participation from resource companies, there is a need to establish mechanisms intended for improving the capacity of Aboriginal communities as regards response to multiple project proposals from same industrial sector. In northwest Saskatchewan, the Environmental Quality Committee (NEQC), administered through the Northern Mines Monitoring secretariat (NMMS) of the government of Saskatchewan provides a forum that increases the understanding of member communities from northern Saskatchewan of the opportunities and challenges with uranium mining development, through regular mine visits and discussions with mining companies and government regulators (Government of Saskatchewan, 2015). However, the NEQC, as currently structured, is not responsible for providing training and support to each communities directly affected by uranium mining activities to improve their capacity for meaningful engagement in project EA.

Needed is the possible adoption of the Regional Municipality of Wood Buffalo's approach to increased requests for project consultation from Alberta's oil sands industry (IGWG, 2008). In the Wood Buffalo case, the establishment of Industrial Relations Committees (IRC) through the assistance of resource companies, with adequately trained staff to handle participation processes in each community, ensured the direct engagement of Aboriginal people and Aboriginal-owned business in the resource development activities. The IRC outlines to the industry detailed processes to adhere, while implementing engagement programs throughout the lifecycle of proposed

developments. In northwest Saskatchewan, costs associated with setting up such committee or negotiating team in each community, and providing staff training programs to develop the technical capacity required to handle reviews of multiple project EA applications and the understanding on how to meaningfully engage in the EA process can be covered by the Aboriginal communities with increased assistance through industry and government sponsorship. In adopting this strategy, it is important to have the responsibilities of such a committee clearly laid out, so that industry knows who to contact and does not bypass the committee and instead go directly to the Aboriginal leadership. An approach of this nature could ensure that project EA participation in northwest Saskatchewan becomes advanced to a high level of sophistication providing for meaningful engagement between the communities and industry.

5.5.2 Improved relationship between communities, industry and government

Similar to Booth and Skelton's (2011a) findings in British Columbia, our results indicated that inefficiencies in Aboriginal participation for uranium exploration projects in the region (e.g., Shea Creek, Patterson Lake South and Lloyd Lake) were influenced largely by the power dynamics that exist within local leadership, and the tension between Aboriginal community leaders and the provincial government. These tensions are due, in large part, to the lack of clear understanding of who is responsible for consultation and participation, and what these processes are meant to achieve. In La Loche and CRDN, the concept of government's delegation to industry of the procedural aspects of consultation was not clearly understood by most locals, hence the incessant complains about government's non-visibility and failure to engage early with communities. The provincial government's exclusion of the municipality of La Loche as a potentially impacted community to be consulted regarding uranium exploration and future mine developments in the region, for reasons that municipalities only exercise authority over lands within their designated boundaries and cannot be consulted for projects outside those boundaries as such activities are not expected to have direct impacts on the community, created tension and dysfunctional interactions between the municipality and the Province. The municipality argued that government's consultation with the CRDN over resource development in the area should equally require consultation with the municipality of La Loche, as the municipality's boundary overlaps the First Nation's territory with the possibility for adverse impacts on both community's land use rights.

Aboriginal participation in EA is often part of a larger, highly politicized process and the northwest Saskatchewan experience suggests, first, that tension or dysfunctional relations between Aboriginal communities and government can affect the nature of EA and participation processes. Though this is not considered a problem caused by EA per se, it is one that affects the efficiency of participation in EA and the EA process in general. In effect, Aboriginal communities tend to use whatever means, including constructive conflicts in attempt to balance power dynamics and ensure their views are not only heard, but meaningfully reflected in the decision making process. For instance, a study on how a collaborative forest management agreement signed between the provincial government of Newfoundland and Labrador and the Innu Nation reflected the values, aspirations and rights of Innu members revealed that the existence of poor relations between the First Nation and the government affected active participation of community members. The result was conflict-based forms of engagement, including roadblocks and public protests, as they pursued multiple strategies for protecting their rights, their lands and their self-determined way of life (Maclean et al. 2015). In the northwest Saskatchewan case, the need to address such fundamental issue is important to achieving meaningful participation and efficient EA processes.

Second, improved communication between community leaders, residents on reserves, chiefs and council, and municipal administration in La Loche and CRDN would enhance the ability of these communities to participate meaningfully in EA process; to document, interpret, exchange knowledge and make readily accessible traditional knowledge to government and project proponents for informed development decision making. In British Columbia, for example, failure by the Tahltan First Nation leadership to provide opportunities for meaningful inputs from the broader community membership during a negotiated agreement between the Tahltan Nation and the province of British Columbia to open up their traditional lands for coal mine development proved problematic for both the Tahltan people and the elected leaders. The signing of the agreement led to significant factions within the Tahltan community, and resulted in huge conflict and protests against the Tahltan leadership (Noble and Udofia, 2015; Noble and Fidler, 2011). Open sharing of information between community leadership about resource developments in the area can empower the community locals to be better positioned to engage in consultation and planning for sustainable resource development and business opportunities (Howitt et al. 2014).

Third, it is important for government to visit local communities early and often to identify needs and opportunities, and help clarify what Aboriginal participation in EA can and cannot accomplish, and follow up on participation strategies in collaboration with Aboriginal communities and industries to ensure their effectiveness in current and future EAs. This suggestion on the significance of government's role in early engagement of Aboriginal communities has been noted in case studies from other Aboriginal communities. In their analysis of the clean energy projects of the Ojibway Pic River First Nation in northern Ontario, and the NaiKun Offshore wind project in the Haida Nation of British Columbia, Krupta et al (2015) report on government's role in shaping the inclusiveness of First Nations through early engagement of potentially impacted communities at the planning and design stages of EA for renewable energy developments. For the Pic River and the Haida Gwaii examples, significant negotiations between the Aboriginal communities, the government, and project proponents ensured the incorporation of the community's long term vision and expectations into the project design and improved the legitimacy of both projects. Improved relationship and partnership building between the municipality of La Loche, CRDN, the mining industry and government could provide leverage grounds for direct sharing of benefits from project development on the traditional lands through meaningful community investments such as business collaborations and joint ventures, contracting opportunities and job trainings, revenues and tax considerations.

5.5.3 Exploring regional and strategic EA to address broader scale policy issues

A common concern raised by industry proponents involved in mining and exploration activities in northwest Saskatchewan was that communities often enter EA participation processes with an expectation to influence decisions about regional resource planning and address broader policy or land claimed-based issues. In such cases, Aboriginal communities were often frustrated by the outcomes of EA, arguing that certain rights, interests or concerns were not given due consideration or were not reflected in the development decision. Attempts to address issues beyond the limited scope of regulatory EA, as earlier noted by Armitage (2005), results in an inefficient participation process. Considering that the EA process is not designed to accommodate and sufficiently address these broader policy issues (Noble and Udofia, 2015), off-ramping such strategic issues to the regional and strategic levels of planning for regional development needs to be explored

(Chetkiewicz and Lintner, 2014; Harriman Gunn and Noble, 2009). The results from this research reinforces the stance of several Aboriginal communities and other interest groups on the call to explore regional and strategic EA for the planning of proposed developments, including in Canada's Western Arctic offshore (Noble et al., 2013), in British Columbia's Elk Valley (Elk Valley CEMF, 2015), in Ontario's mineral rich Ring of Fire (Chetkiewicz and Lintner, 2014), and in southern Saskatchewan's Great Sand Hills (Great Sand Hills Scientific Advisory Committee, 2007).

There are many potential benefits to be realized through regional and strategic EA in northwest Saskatchewan – of particular significance is the potential to better capture the cumulative effects of development to Aboriginal lands and communities that do not trigger regulatory EA, and providing a platform for influencing the overall nature, shape and pace of project development in the region. The need to address the cumulative effects of uranium mining development in northern Saskatchewan was previously noted by a joint federal – provincial review panel, from 1991 to 1997. The panel was established to review, amongst other issues, the cumulative effects of multiple projects proposed across the Athabasca basin region, and noted that cumulative effects monitoring is particularly important on a regional scale to better assess and mitigate the potential spread of contaminants from existing and proposed mines through the Cumulative Effects Monitoring Working Group (CEMWG) (Joint Federal-Provincial Panel on Uranium Mining Development, 1997).

The late timing of Aboriginal participation in EA, which is typically during project-based assessments, not only limits a community's influence on the appropriateness of resource development for a region, but also limits its influence on determining the most desirable development futures. Similar to findings by Lajoie and Bouchard (2006) on the benefits of Cree involvement in the strategic assessment of development plans and policies for the Great Whale hydroelectric megaproject in Quebec, results from northwest Saskatchewan suggested that integrating Aboriginal participation into regional and strategic EA, where policies and plans are mapped out, could provide greater opportunities for potentially affected communities to influence decisions about land use and conservation, as well as the nature and pace of development, prior to participating in project specific EAs where the emphasis is on how to make anticipated impacts

less severe. Exploring such opportunities can serve to eliminate strategic issues being raised at the time of project assessment, and provide the assurance that Aboriginal interests about development are represented prior to when individual project applications are entertained. These suggestions seems to resonate well with views from other authors (Noble and Udofia, 2015; Chetkiewicz and Lintner, 2014; Fidler and Noble, 2012; Assembly of First Nations, 2011; Booth and Skelton, 2011a), emphasizing the need for government and industry to step back from asking for ‘more’ participation for individual projects, and to focus more on exploring regional and strategic EA as model for effective engagement with Aboriginal communities. The challenge at hand is that formal, strategic level assessment processes do not currently exist in most jurisdictions across Canada, including northern Saskatchewan.

5.6 Future research needs and directions

The practice of EA in Canada has been challenged by many factors, including the lack of clarity of the role and purpose of participation in EA and decision making (Runhaar, 2009); inconsistencies in the consultation of Aboriginal peoples whose lands and resources are potentially affected by development (Noble and Birk, 2011); and minimal sharing of lessons from practice to improve EA processes (Galbraith et al., 2007; Mulvihill and Baker, 2001). EA is still evolving, and the expectations of what it can and should achieve with respect to Aboriginal participation are receiving widespread attention (e.g. Maclean et al., 2015; Doelle and Sinclair, 2006; Armitage, 2005), but much less attention has been given to Aboriginal participation in EA that is both meaningful and efficient. To date, much of the focus has been on demanding more participation in EA with relatively little consideration of the implications for process efficiency (Kirchoff et al., 2013; Morgan, 2012; Gibson, 2012), or on streamlining EA processes with little regard for the implications for meaningful engagement (Salomons and Hoberg, 2014; Collyer, 2012).

This thesis addressed the meaningfulness and efficiency of Aboriginal participation in EA through the examination of scholarly and policy research, several legal and policy cases from EA practice, and the perceptions of industry, government and Aboriginal communities involved in EA for mineral resource development in northwest Saskatchewan. The results emerging from this research show how participation in EA has evolved over time; identifies the enduring challenges to participation and the underlying factors that influence EA practice; and suggests needed reforms

to ensure meaningful and efficient participation in EA. A key contribution of this research is that devising effective solutions for improving Aboriginal participation in EA that go beyond reactionary approaches, such as revising participation timelines or increasing participant funding for community engagement in EA hearing processes, requires an initial understanding of the nature and current challenges to both meaningfulness and efficiency. In this way, the research illuminates the importance of government, industry and Aboriginal communities to collaboratively explore EA reforms and enhancements, as a necessary step to implementing lasting improvements to the broad suite of challenges to participation that invariably affects the efficiency of EA processes.

Further, the results of this research emphasizes the importance of ensuring that Aboriginal participation in EA is meaningful to those affected by and engaged in participation processes (Booth and Skelton, 2011a, b; Whitelaw et al., 2009; Lajoie and Bouchard, 2006; Tuck et al., 2005), and efficient for project proponents who must meet certain budgets and timelines to ensure the viability of their project (Noble et al., 2013; Voutier et al., 2008; Harrison, 2006). This is consistent with observations by several authors who have addressed enduring concerns to Aboriginal participation in EA, calling for changes to participation processes and provisions to appropriately accommodate Aboriginal interests amidst a timely project regulatory process (e.g. Hanna et al., 2014; King and Cruickshank, 2012; Booth and Skelton, 2011a).

Though the potential to achieve better participatory processes in EA is recognized; future research is required in several areas. First, research is needed to further clarify the intent and better define the expectations regarding the scope of issues that can be adequately accommodated inside participation processes in project-oriented EA. Second, empirical research is needed to identify the measurable impacts of streamlining on meaningful participation, and the impacts of meaningful participation on timely and efficient EA. Third, research is needed to identify the means by which participation through regional and strategic EA processes can meaningfully influence regulatory-based development decisions. Finally, perhaps more importantly, several foundational yet complex challenges to meaningful Aboriginal participation identified in this thesis require scholarly and policy attention if meaningful Aboriginal participation and efficient EA for resource development are to be achieved. These include research and policy development to help address: the non-commitment to early and ongoing participation by smaller project proponents; the limited

availability of information to developers on local right holders and interests; expectations about the comprehensive integration of traditional knowledge and land use in EA often not aligning with the documented information that is available to proponents; limited understanding, and perhaps confusion, about who is responsible for initiating early participation and consultation processes, and what they are to achieve; and the lack of early relationship building between government and potentially affected communities.

5.7 Conclusion

The purpose of this research was to understand the prospects and challenges to achieving EA processes that are both effective in providing the opportunity for communities to shape the outcomes of proposed resource development initiatives, yet efficient in accommodating the needs of proponents to obtain a decision in timely and financially viable manner. Specifically, through examining the meaningfulness of Aboriginal participation in EA and the implications for process efficiency, the research provided practical insights to improve current EA practice and in doing so improve Aboriginal participation in EA for resource development.

There were limitations to the research. First, since the study was based on case analysis of two closely related communities (the municipality of La Loche and the Clear River Dene First Nation), as opposed to carrying out a study in two independent locales, a major challenge was how to account for diverse and potentially biased views about Aboriginal participation from various interests in the EA policy community - especially from local representatives of both communities, and from industry representatives with operational projects in both communities. Acknowledging the possibility for conflicting, non-unified opinions from key actors about participation in EA processes and resource development, interview participants were thus encouraged to indicate their respective roles as they relate to participation in EA. Common themes were identified based on an iterative process of coding up, and examined alongside the affiliations of those who shared common perspectives, or dissenting views, as a means to explore potential biases and also avoid any presuppositions that there would be clear divisions within the EA policy community based simply on Aboriginal versus non-Aboriginal perspectives.

Second, evaluation of the meaningfulness and efficiency of Aboriginal participation in EA was restricted to examining the views of a cross section of representatives from government, industry, environmental NGOs, the Meadow Lake Tribal council and some community leaders and groups. The views of other community groups not previously identified as part of the policy community, including non-aboriginal community members and non- resident community members, were not included. Though valuable perspectives, exploring these additional views was beyond the immediate scope and aim of the research. Third, the scope of this research focused on evaluating perspective on current EA and participation practices in northwest Saskatchewan. Valuable lessons may emerge from a broader research design, drawing on several related case studies in northern Saskatchewan and across other jurisdictions, to identify common lessons and opportunities, and to account for any influence that local context may have had on influencing the recommendations emerging from this thesis. Since this region has a long history of uranium mining activity, and relationships with government and the mining industry, results and perspectives may likely differ in areas that are facing development for the first time.

The importance of meaningful and efficient Aboriginal participation in EA cannot be overstated, particularly given the potential for further large scale resource development in Canada's North, combined with recent reforms to the *Canadian Environmental Assessment Act, 2012* that restrict the scope of federal assessment applications (see Gibson, 2012). The scholarly community, in collaboration with Aboriginal communities, project proponents, and regulators, need to explore and better define expectations regarding participation *inside* the EA process, what can be meaningfully achieved within the scope of a project-base assessment, and pursue the reforms suggested by this research to help advance the meaningfulness of Aboriginal participation in EA. The increased loading of expectations for participation at the individual project EA level, specifically the increased emphasis placed on broader regional resource development policy and land use, illustrate the need for regional and strategic EA systems and frameworks in order to better engage Aboriginal communities as partners in collaborative regional planning and resource development decision-making.

In conclusion, this research identified a number of contemporary issues facing Aboriginal participation in EA that have not been reported elsewhere in the literature, and several foundational

yet complex challenges to meaningful Aboriginal participation that still persist in practice requiring immediate scholarly and policy attention if meaningful Aboriginal participation and efficient EA for resource development are to be achieved. Further, though the need to achieve better participatory processes in EA is recognized, resolving a good number of these challenges requires understanding the needs, expectations, roles and responsibilities of all those engaged in the EA policy community as a necessary step to identifying approaches to implement lasting systemic and process improvements. This research also highlights the need to explore how to achieve, and perhaps even the possibility of achieving, meaningful Aboriginal participation in EA within the efficiency constraints of current practice. The EA reforms and enhancements identified in this thesis are intended to serve as spring boards to generate further conversations and potentially effective solutions that will go beyond reactionary approaches to advance meaningful Aboriginal participation in EA for resource development.

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APPENDIX A: INTERVIEW QUESTIONS

Table 1.1 Study themes, corresponding research objectives and questions, and interview questions

Variable/ Theme	Objective #/Research Question	Draft Interview Questions
Perception/Views (Data Sources: Interviews. Document analysis)	Obj. 2/ RQ 1: What are the expectations of EA regulators, industry and communities with respect to the implementation of effective and efficient community engagement and consultation during EA?	Questions to be designed specifically for each participants- communities, industry, EA regulators (See Table 1.2a)
Enduring Challenges (Data Sources: Interviews)	Obj. 2/RQ 3: What are the enduring challenges to meaningful engagement in EA given potential increases in mineral resource development applications?	Questions to be designed specifically for each participants- communities, industry, EA regulators (See Table 1.2c)

Table 1.2a Semi-structure Interview Guide – Draft Questions (COMMUNITY)

Theme 1: GENERAL PERSPECTIVE ABOUT EFFECTIVENESS AND EFFICIENCY OF PARTICIPATION/ENGAGEMENT IN EA AND DECISION MAKING	
1. From your perspective, what would you characterize as an effective and efficient participation process?	Probe: where effective means that the process achieves its stipulated purpose.

	Efficient means it achieves its purpose and produces expected result without undue delay and minimum expenditure of resources.
2. Based on the time assigned for Aboriginal participation, does the timing allow for proper implementation of the process in your opinion?	Probe: Do you feel these sessions are responsive to community concerns about resource developments?
3. Are there information dissemination and communication deficiencies associated with these organized engagement sessions?	
4. In your opinion, does Aboriginal participation influence resource development decisions? How do communities bring in TEK into the decision making processes?	If not, what are some of the things that limits the community's capacity to influence development decisions? What are your community values? How these values are promoted or denied in the process?
Theme 2: IMPLEMENTATION OF PUBLIC AND COMMUNITY ENGAGEMENT	
5. In other jurisdictions, reports shows that Aboriginal participation are cumbersome, repetitive and time consuming, is it the same here?	Probe: What's happening on ground?
6. Experience from past engagement processes shows there is a huge challenge in the area of local capacity of northern communities to be meaningfully engaged, is this an ongoing problem? Do you have strategies in place to address this?	In your opinion, what could be done, and how can it be done (i.e. what approach should it take) to resolve the issue of lack of local capacity and ensure the improvement of community engagement?
7. In your opinion, do you support the notion that Aboriginal participation in EA processes can be both effective and efficient?	Effective - in providing the ability for communities to shape outcomes of proposed resource development projects Efficient - in accommodating the need of resource development proponents to obtain a decision in timely and financially viable manner.
Theme 3: IMPROVEMENT STRATEGIES AND APPROACHES FOR PARTICIPATION/ENGAGEMENT IN EA	
8. Would you then say that Aboriginal participation during EA in your community are effectively and efficiently implemented?	Probe: what's happening on ground? If it isn't, why? Is it a real problem? What are the challenges to achieving this?
9. If you could, what would you suggest the industry and/or government do to improve the effective and efficient implementation of Aboriginal participation and why?	*suggestion to be explored-could Aboriginal participation be done outside the scope of EA i.e. Aboriginal participation provision under the current Act is implemented once at the regional level such that every application for resource development has to meet the requirements listed in the one-time consultation framework*

10. Out of curiosity, what do you presume that the EA regulators and industry thinks of the current regulatory process for implementing Aboriginal participation?	
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Table 1.2b Semi-structure Interview Guide – Draft Questions (INDUSTRY)

Theme 1: GENERAL PERSPECTIVE ABOUT EFFECTIVENESS AND EFFICIENCY OF PARTICIPATION/ENGAGEMENT IN EA AND DECISION MAKING	
11. From your perspective, what would you characterize as an effective and efficient Aboriginal participation process?	Probe: where effective means that the process achieves its stipulated purpose. Efficient means it achieves its purpose and produces expected result without undue delay and minimum expenditure of resources.
12. If exploration activities does not trigger the Crown to be involved or consult FN, does the industry engage these communities on time? (i.e. during mineral exploration stage)	How and when is this initiated?
13. In your opinion, does Aboriginal participation influence resource development decisions? How do communities bring in TEK into the decision making processes?	If not, what are some of the things that limits the community's capacity to influence development decisions? Are the communities concerns and values promoted or denied in the process?
Theme 2: IMPLEMENTATION OF PUBLIC AND COMMUNITY ENGAGEMENT	
14. In other jurisdictions, reports shows that Aboriginal participation are cumbersome and time consuming, is it the same here?	Probe: What's happening on ground?
15. Are there occasions where engagement is done because it needs to be done, but not necessarily required – was it considered as a duplication of effort, unnecessary and repetitive?	If yes, what can be done, or stopped doing to improve the situation?
16. In your opinion, do you support the notion that Aboriginal participation in EA processes can be both effective and efficient?	Effective - in providing the ability for communities to shape outcomes of proposed resource development projects Efficient - in accommodating the need of resource development proponents to obtain a decision in timely and financially viable manner.
Theme 3: IMPROVEMENT STRATEGIES AND APPROACHES FOR PARTICIPATION/ENGAGEMENT IN EA	
17. Would you then say that Aboriginal participation during EA in these communities are effectively and efficiently implemented?	Probe: If it isn't, why? Is it a real problem? What are the challenges to achieving this? What needs to be done to improve it? *suggestion to be explored-could Aboriginal participation be done outside the scope of EA? i.e. Aboriginal participation provision under the current Act is implemented

	once at the Regional level such that every application for resource development has to meet the requirements listed in the one-time consultation framework*
18. From your perspective, do you believe the present regulatory structure has helped to change or improve Aboriginal participation in EA?	Probe: current changes to CEAA 2012 that streamlines participation-does this improve effectiveness and efficiency of the process?
19. Out of curiosity, what do you presume that the EA regulators and community thinks of the current regulatory process for implementing Aboriginal participation?	

Table 1.2c Semi-structure Interview Guide – Draft Questions (REGULATORS)

Theme 1: GENERAL PERSPECTIVE ABOUT EFFECTIVENESS AND EFFICIENCY OF PARTICIPATION/ENGAGEMENT IN EA AND DECISION MAKING	
20. From your perspective, what would you characterize as an effective and efficient Aboriginal participation process?	Probe: where effective means that the process achieves its stipulated purpose. Efficient means it achieves its purpose and produces expected result without undue delay and minimum expenditure of resources.
21. In Aboriginal participation for resource development in Saskatchewan, what is the role of government and what is the role of industry?	Probe: in what way does each stakeholder ensure an effective and efficient process?
22. In your opinion, does Aboriginal participation influence resource development decisions? How do communities bring in TEK into the decision making processes?	If not, what are some of the things that limits the community's capacity to influence development decisions? Are the communities concerns and values promoted or denied in the process?
Theme 2: IMPLEMENTATION OF PUBLIC AND COMMUNITY ENGAGEMENT	
23. In other jurisdictions, reports shows that Aboriginal participation are cumbersome and time consuming, is it the same here?	Probe: what's happening on ground?
24. Are there occasions where engagement is done because it needs to be done, but not necessarily required – was it considered as a duplication of effort, unnecessary and repetitive?	If yes, what can be done, or stopped doing to improve the situation?
25. In your opinion, do you support the notion that Aboriginal participation in EA processes can be both effective and efficient?	Effective - in providing the ability for communities to shape outcomes of proposed resource development projects Efficient - in accommodating the need of resource development proponents to obtain a decision in timely and financially viable manner.
Theme 3: IMPROVEMENT STRATEGIES AND APPROACHES FOR PARTICIPATION/ENGAGEMENT IN EA	

<p>26. Would you then say that Aboriginal participation during EA in Saskatchewan are effectively and efficiently implemented?</p>	<p>Probe: If it isn't, why? Is it a real problem? What are the challenges to achieving this?</p> <p>What needs to be done to improve it?</p> <p>*suggestion to be explored-could Aboriginal participation be done outside the scope of EA? i.e. Aboriginal participation provision under the current Act is implemented once at the regional level such that every application for resource development has to meet the requirements listed in the one-time consultation framework*</p>
<p>27. From your perspective, do you believe the present regulatory structure has helped to change or improve Aboriginal participation in EA?</p>	<p>Probe: current changes to CEAA 2012 that streamlines participation-does this improve effectiveness and efficiency of the process?</p>
<p>28. Out of curiosity, what do you presume that the community and industry thinks of the current regulatory process for implementing Aboriginal participation?</p>	